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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1938

No. 55

A. E. McDONALD, PETITIONER,

vs.

ERNEST O. THOMPSON, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED MAY 21, 1938.

CERTIORARI GRANTED OCTOBER 10, 1938.

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CAPTION.

BE IT REMEMBERED that at a term of the District Court of the United States for the Northern District of Texas, begun and holden at Fort Worth, Texas, on the 9th day of March, A. D. 1936, and which term adjourned on the 31st day of October, A. D. 1936, the Honorable James C. Wilson, United States District Judge, presiding, the following cause came on for hearing and was heard, to-wit:

No. 864 In Equity.

A. E. McDONALD,

versus

ERNEST O. THOMPSON, ET AL.

BILL OF COMPLAINT.

Filed Jan. 17, 1936.

In the District Court of the United States for the Northern District of Texas, Fort Worth Division.

A. E. McDonald, Complainant,
vs. No. 864—In Equity.
Ernest O. Thompson, et al., Respondents.

To the Honorable Judge of said Court:

Comes now A. E. McDonald, hereinafter styled complainant, and files this his Bill of Complaint against the following named Respondents, Ernest O. Thompson, C. V. Terrell, Lon A. Smith, Walton D.

Hood, W. B. Renfro, and Tom Miller, and would respectfully show to the Court:

I.

That your complainant is an individual residing and domiciled in the City of Waxahachie, Ellis County, Texas; that the respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith are the duly elected, qualified, and acting Railroad Commissioners of the State of Texas, said Ernest O. Thompson being the chairman thereof, and that at all times herein mentioned they have composed and now compose and constitute the full membership of the Railroad Commission of Texas; that the respondent, Walton D. Hood is the chief law enforcement officer and chief of inspectors for the Railroad Commission of Texas; and that the respondents, W. B. Renfro and Tom Miller are inspectors and employees of the Railroad Commission of Texas, with the duties of enforcing the motor carrier law both as to the movement of property and passengers within the State of Texas. That the respondents, Ernest O. Thompson, C. V. Terrell, Lon A. Smith and Walton D. Hood are each residents of the City of Austin, Travis County, Texas; that the respondent, W. B. Renfro, is a resident of
3 the City of Fort Worth, Texas, and the respondent, Tom Miller, is a resident of the City of Dallas, Dallas County, Texas; each of the last named respondents being within the Northern District of Texas.

II.

That this Court has jurisdiction of this cause of action in that this controversy arises under the Constitution and the laws of the United States of America and involves a Federal question, the controversy herein

arising from the following facts as will hereinafter more fully appear, complainant herein asserting that he has for many years operated motor trucks in the transportation of property as an interstate common carrier for hire; that he had been regularly operating as such interstate common carrier by motor vehicle for hire for many years prior to June 1, 1935, and at all times since June 1, 1935, and that this controversy involves complainant's right to continue to so operate as an interstate common carrier for hire by motor vehicle over the highways of the States of Texas and Oklahoma under the interestate commerce clause of the Federal Constitution, and especially by reason of the enactment by the Federal Congress of Senate Bill No. 1629 which is an act to amend the Interstate Commerce Act as amended by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, which Act is some times referred to as the Motor Carrier Act of 1935. That the sum of more than $3,000.00 is involved in this controversy in that if the injunctive relief herein prayed for should be denied this complainant will in consequence thereof suffer irreparable damages in the sum of more than $3,000.00 as will be more definitely shown herein, and that the matter in controversy, exclusive of interest and cost, in value exceeds the sum of $3,000.00, and that, as will be more definitely shown herein, complainant has no plain, adequate, and complete remedy at law.

4 III.

That at all the times herein mentioned complainant or his predecessor in interest, so far as the same relates to the use of the highways of the State of Oklahoma, was and now is engaged in the business of transporting property in motor vehicles through and between the State of Texas and Oklahoma and by reason of

connections with other common carriers by water at the Port of Houston from various other states of the United States of America into and through the States of Texas and Oklahoma and between intervening points situated in different states, but is not engaged in transporting any property for hire between two points within the same state. That complainant has for several years and both prior to and subsequent to June 1, 1935, accepted and transported freight originating at shipside at the docks in Houston, Texas, originating in states other than the State of Texas and moving in interstate commerce through the Port of Houston to various points within the State of Texas and Oklahoma, and has for several years both prior to June 1, 1935 and subsequent to June 1, 1935, transported various commodities from various points within the State of Texas, and especially from the cities of Fort Worth, Dallas, and San Antonio to Houston, Texas, where the same is destined to points outside of the State of Texas, and where its journey is ordinarily continued by water routes to various states other than the states of Texas and Oklahoma, and to foreign countries. That complainant has in such transportation, both prior to and subsequent to June 1, 1935, especially used within the State of Texas highways designated as Federal Highways Nos. 75, 77, 80, 81, 290, 90 and 281, and that all of the highways he has used within the State of Texas have been Federal aided highways and that within the State of Oklahoma complainant, or complainant's predecessor in interest, has used various highways within the State of Oklahoma and has been authorized to use any and all highways within the State of Oklahoma in the transportation of property moving in interstate com-

5 merce. That a great many, if not all, of the the highways used in the State of Oklahoma are Federal aided and Federal designated highways, and that practically all, if not all, of the highways used both in the States of Texas and Oklahoma have been designated as Federal Highways constructed, re-

paired, and maintained in whole or in part by what is known as Federal funds provided by the United States Government. That over said interstate routes complainant is engaged in transporting property for hire to and from points within the State of Texas to and from points within other states of the United States as aforesaid, but is not engaged in transporting property nor does he desire to engage or hold himself out as engaging in the transportation of property between points within the State of Texas. That complainant was thus engaged during all of the times herein mentioned and as hereinbefore alleged, and has been engaged exclusively in the transportation of property in interstate commerce and is not engaged in any intrastate transportation or business within the State of Texas or within any other state of the United States of America.

IV.

That by an act of the Congress of the United States of America generally known and commonly referred to as the Motor Carrier Act of 1935 (Senate Bill No. 1629), approved August 9, 1935, by its terms effective on and after the first of October, 1935, the sole and exclusive jurisdiction, power, and authority to regulate the transportation of all passengers and property by motor vehicles operating in interstate commerce has been vested in and is now vested in the Interstate Commerce Commission of the United States. Said Act is, as hereinabove alleged, known as "An Act to amend the Interstate Commerce Act as amended by providing for the regulation of the transportation of passengers and property by motor carriers operating in interstate or foreign commerce, and for other purposes."

6 V.

That under the provisions of said Act of Congress complainant will be entitled to apply for and to

receive from the Interstate Commerce Commission a certificate of public convenience and necessity and such permits as will entitle complainant to continue his operations over said various highways in the transportation of property and goods moving in interstate commerce, and that complainant, under the terms and provisions of said Act, will be entitled to receive said certificate and such permits as hereinbefore alleged as a matter of right and especially under the provisions of Section 206 of said Act which provides among other things as follows:

"Provided, however, that, subject to Section 210, if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935, over the route or routes or within the territory for which application is made and has so operated since that time, or if engaged in furnishing seasonal service only, was in bona fide operation on June 1, 1935, during the season ordinarily covered by its operation, except in either instance as to interruptions of service over which the applicant or its predecessor in interest had no control, the commission shall issue such certificate without requiring further proof that public convenience and necessity will be served by such operation and without further proceedings, if application for such certificate is made to the Commission as provided in paragraph (b) of this section and within one hundred and twenty days after this section shall take effect."

That under said Act as amended the time for applying for said certificate or permit has not expired, and under the terms of the Act would not and will not expire until the 29th day of January, 1936, but that by an order of the Interstate Commerce Commission extending the effective date of section 206 of the aforesaid Act, the time for applying for said certificate or permit has not expired and will not expire until

the 12th day of February, 1936, and that your complainant is now engaged in taking active steps to secure said certificate and any permits that may be needed, and to apply for and file the proper application therefor. That your complainant has practically completed his application for filing and that the same will be filed with the Interstate Commerce Commission within the next ten days and within the time prescribed by the aforesaid Act of Congress.

That no certificates or permits have yet been issued and that the time for the issuance of such certificates or permits under and pursuant to said Act as amended has not yet arrived. That the jurisdiction over the regulation and control of the transportation by motor vehicle of passengers and property in interstate commerce, nevertheless, now exclusively rests in the Interstate Commerce Commission. That as hereinbefore alleged, your complainant was so engaged in said transportation of property for hire as a common carrier for several years prior to June 1, 1935, and has at all times since June 1, 1935, been so engaged in such a way as to entitle your complainant to apply for and to receive said certificate or permit from the Interstate Commerce Commission under that portion of said Section 206, as hereinabove set out, commonly referred to as the "Grandfather Clause." That under the terms and provisions of said Act your complainant is now entitled to continue in the transportation of property as a common carrier without such certificate or permit until such time as the Interstate Commerce Commission may act upon the aforesaid application or until otherwise ordered by the Interstate Commerce Commission. That your complainant has complied with all the requirements of the aforesaid Act of Congress, or is attempting to comply therewith, by filing the aforesaid application, and has at all times herein mentioned complied with all the appropriate and applicable police regulations of the State of Texas with reference to his aforesaid operations in interstate commerce.

VI.

That the respondents, Railroad Commissioners and their duly authorized agents, Walton D. Hood and W. B. Renfro, and Tom Miller, as well as all other agents and representatives of the said Railroad Commissioners of the State of Texas, and especially the Chief Law enforcement officer and chief of inspectors, Walton D. Hood, purporting to act under and pursuant to certain statutes of the State of Texas, particularly Chapt. 277, page 408, Acts of the 42nd Legislature, are attempting to exercise the
8 same control and power of regulation of the complainant in the conduct of his interstate transportation business within the State of Texas as has been exclusively vested in the Interstate Commerce Commission by the aforesaid Act of Congress. That because your complainant has not received from the Railroad Commission of Texas a certificate of convenience and necessity under and pursuant to said Texas statutes, the Railroad Commission of Texas and the members thereof, and the other respondents herein named, have refused to issue and deliver to your complainant the license tags or numbers that are required by the Railroad Commission to be affixed to all motor vehicles carrying property in the transportation business for hire as common carriers in the State of Texas. That the respondents, Railroad Commissioners and especially the respondent Walton D. Hood, law enforcement officer and Chief of inspectors for the Railroad Commission of Texas, have issued order and instructions to all inspectors as well as to the Texas State Highway Patrol, and to all law enforcement officers to, on and after January 15, 1936, arrest all drivers and stop all trucks, and to file charges against your complainant and all of the drivers of his trucks, and that chief law enforcement officer, Walton D. Hood, and the respondents, W. B. Renfro and Tom Miller, as well as all other inspectors who are

agents, officers and representatives of the Railroad Commission of Texas, are threatening to and will, unless enjoined by this Honorable Court, arrest your complainant and all of your complainant's truck or motor vehicle drivers, and stop all of your complainant's trucks or motor vehicles from operating in interstate commerce within the State of Texas, and will file criminal complaints against your complainant and all of your complainant's drivers of trucks or motor vehicles, and that the respondent, Walton D. Hood, has not only issued instructions to all officers, as hereinbefore alleged, directing that all of your complainant's trucks or motor vehicles be stopped, drivers arrested, charges filed, etc., but that said re-
9 spondent, Walton D. Hood, has by word of mouth directly told your complainant's counsel and threatened to your complainant's counsel to see that all of your complainant's operations and transportation of property in interstate commerce was completely stopped and prohibited in the State of Texas, and that all trucks would be stopped, that all drivers would be arrested, and that charges would be filed.

VII.

Your complainant alleges, as he has hereinbefore alleged, that he has complied with and is complying with all of the requirements of the Federal motor carrier act of 1935, and with all rules and regulations or other requirements as prescribed by the Interstate Commerce Commission as fast as said rules or regulations are promulgated or made known to your complainant through appropriate orders of the Interstate Commerce Commission, and that your complainant has complied with all of the police requirements of the State of Texas and has at all times herein mentioned and for several years past has complied with all police requirements of the State of Texas to permit him to

operate in interstate commerce, but that nevertheless respondents and each of them have threatened to and will unless enjoined by this Honorable Court, stop your complainant from operating in interstate commerce within the State of Texas and will arrest your complainant's drivers and file charges against them, and will stop your complainant's trucks from operating in interstate commerce notwithstanding complainant's compliance with the Federal motor carrier Act of 1935, and all appropriate and applicable police requirements of the State of Texas. That your complainant now has trucks loaded at his docks at Waxhachie, Texas, and at other points within the State of Texas with commodities and property generally moving strictly and exclusively in interstate commerce, but that your complainant is and has always been and endeavored to be a law abiding citizen and does not wish to either subject himself to arrest and criminal prosecution, nor subject his drivers to arrest and criminal prosecution, nor have his trucks and the commodities moving exclusively in interstate commerce stopped and delayed and deliveries not made, and that by reason of such facts and the acts, conduct, and threats of the respondents herein your complainant is not today permitting said trucks to go on the highways for fear of said criminal prosecutions and arrests, although your complainant by reason thereof is suffering and will suffer irreparable injury and damage such as to entitle your complainant to the injunctive relief herein sought under the Constitution and Statutes of the United States of America.

VIII.

Your complainant, as heretofore alleged, has been engaged exclusively in the transportation of property in interstate commerce for several years and for a long time prior to June 1, 1935, and at all times since

June 1, 1935, during which time your complainant has built up and now enjoys a lucrative transportation business amounting in net revenues to many thousand dollars per year, and far exceeding the sum of $3,000.00; that the value of the certificate your complainant is entitled to receive is a highly valuable right exceeding many times the sum or $3,000.00, but that if respondents are permitted to arrest and prosecute your complainant, stop your complainant's trucks and arrest your complainant's drivers and prosecute them, that your complainant's interstate transportation business will not only be destroyed, but that such acts and conduct upon the part of respondents herein will jeopardize and destroy the right and possibility of your complainant's receiving from the Interstate Commerce Commission the certificate to engage in interstate commerce as hereinbefore alleged. That in connection with complainant's application for a certificate of convenience and necessity from the Interstate Commerce Commission, your complainant desires to show and he will show and such showing will inure to his benefit that he or his immediate predecessor in interest has maintained continuous service over his interstate routes; that he will be unable to show that he has maintained such continuous service if he is subjected to arrests and criminal prosecutions and his trucks are stopped by the respondents or other law enforcement officers and interruptions are thereby occasioned in your complainant's service.

11

IX.

That notwithstanding the said respondents, as hereinabove alleged, have no jurisdiction, right, or authority whatsoever to prevent your complainant's trucks and motor vehicles from operating in interstate commerce within the states of Texas and Oklahoma, yet your complainant has in every way endeavored to

comply with and has complied with all the laws of the State of Texas in the following manner:

1. That complainant has caused public liability and property damage insurance to be issued and that the same is now in full force and effect, and has at all times herein mentioned been in full force and effect upon each and all of his trucks which he operates within both the states of Texas and Oklahoma in the amounts required by the Railroad Commission of Texas and the Corporation Commission of the State of Oklahoma, which fact is a matter of record in the files of each of said Commissions..

2. That the trucks which your complainant operates now and has operated at all times herein mentioned through the State of Texas are in excellent mechanical condition; they are properly registered for operation in the state in which they operate under the registration laws of the State of Texas; they have complied with all of the requirements of the laws of the State of Texas as to length, width, height, breaking and lighting equipment as well as all other mechanical requirements of the laws of the State of Texas, and that said trucks are in every way suitable to safely operate upon the highways and to transport property within and through the State of Texas, of which fact the respondents are well informed and acquainted.

12 3. That your complainant has offered to comply with every appropriate and applicable law of the State of Texas, and all rules and regulations of said Railroad Commission of Texas.

Notwithstanding the foregoing facts, the respondents and each of them are threatening to and openly stating that they will stop your complainant's trucks so engaged in interstate commerce in the transportation of property for hire.

X.

That prior to June 1, 1935, and at all times since June 1, 1935, your complainant has been engaged in the transportation of propefty moving in interstate commerce exclusively, and now seeks to continue to engage in said business under the provisions of the Federal Motor Carrier Act of 1935. He has built up a lucrative interstate transportation business; that the very essence of his business of transporting property in interstate commerce for hire is the ability of your complainant to maintain his service and that if his service is delayed, or if he is unable to continue such service for any length of time by reason of respondent's stopping his trucks and arresting his drivers, the confidence of the shipping public will be destroyed, together with their patronage, and the threatened acts and conduct of said respondents if carried out will prevent the maintenance of said service and result in demoralizing and destroying your complainant's business, and will further result in irreparable injury.

XI.

Your complainant has no plain, speedy, and adequate remedy at law in that the wrong complained of will cause collateral and consequential damages which are not compensable at law, and the full damage that will be suffered by your complainant cannot be recovered at law, and any legal remedy available would be attended by uncertainties, unreasonable delays, and irretrievable pecuniary loss, and unless the respondents are restrained the wrong complained of will be completed.

13

XII.

That immediate and irreparable injury, loss, and damage in an amount of not less than $50,000.00 will

result to your complainant before notice of any application for preliminary injunction can be served and a hearing had thereon, unless relief is granted by this Court in the form of a temporary restraining order against the respondents restraining them from doing the things herein complained of, and from in any way interfering with your complainant in causing his trucks or any of them to operate in interstate commerce and traversing the highways of the State of Texas. That your complainant has invested large sums of money in equipment of the value of not less than $10,000; has invested large sums in obtaining the insurance hereinabove referred to; has established docks and warehouses in various cities in the States of Texas and Oklahoma, especially including the cities of Houston and San Antonio, Waxahachie, Fort Worth and Dallas within the State of Texas, the terminal and dock facilities at Waxahachie being owned by your complainant and your complainant being liable under contract for large sums of money by way of lease and rentals at other points herein mentioned; that he has employed approximately 25 people as bookkeepers, shipping clerks, drivers, and in various other capacities, and has invested considerable sums of money in printing in way bills, bills of lading, reports, and report books, and such other equipment as is usual, customary, and commonly used in such business, and that his actual daily payroll during such time as he might be stopped by the respondents from operating amounts to approximately $100.00 per day. That your complainant is fully prepared and ready to and will transport property in interstate commerce and that such property has already been tendered and is now being tendered to your complainant for transportation in interstate commerce. That your complainant has already accepted for transportation and contracted with various people to transport their property in interstate commerce and that the action of the respondents in stopping your complain-

ant's trucks and preventing them from traversing the highways of the State of Texas have and will cause great and irreparable injury and damage to complainant, and especially in that your complainant will not be permitted to proceed with his business and to transport property of those for whom he has been regularly transporting property and for those who have tendered and are now tendering your complainant property to transport as well as all other property which complainant would be engaged to transport, and complainant will be greatly and irreparably damaged in his capital investment as above set out, which will be rendered of practically no value whatsoever, and he will be deprived of his goods and profits which he would otherwise have made in the transportation of such property for hire in interstate commerce.

XIII.

That the aforesaid acts of the respondents and each of them, together with their agents acting under their direction as above set out and the threatened continued action interfering with the conduct of complainant's business of the transportation of property in interstate commerce as a common carrier, are unlawful, arbitrary, and wholly without sanction of law, State or Federal, and constitute an invasion of your complainant's rights guaranteed to him under the laws of the Constitution of the United States in the following particulars:

1. That said acts and conduct of respondents deprives your complainant of his rights under the Constitution and laws of the United States vesting in the Congress of the United States exclusive jurisdiction over the regulation of interstate and foreign commerce and in that way the respondents are violating and threaten to violate to the complainant's irreparable

damage, complainant's rights under the Commerce Clause of the Federal Constitution.

2. That said action and threatened action and conduct constitute an unlawful deprivation of the complainant's property and property rights guaranteed to him under the Due Process Clause of the 14th Amendment to the Constitution of the United States.

15 Wherefore, complainant prays that this Honorable Court issue a restraining order restraining the respondents individually and in their official capacities, their agents, servants, representatives, and employees, and either, any, and all of them, from causing either directly or indirectly, or causing in any way the molestation, arrest, or interference with the drivers of your complainant's trucks, and from in any manner restraining or interfering with the operation of any truck belonging to your complainant while engaged in interstate commerce, and from in any way impeding, hindering or interfering with the complainant's business in the transportation of property in interstate commerce in any manner whatsoever; and that a hearing be had and a temporary injunction be decreed with like restraint against said respondents and their agents, servants, representatives, and employees, and upon final hearing hereof that said temporary injunction be made permanent, for costs, and for such other and further relief, premises considered, as to the Court may seem just.

PRICE AND CHRISTOPHER,
WILLIAM E. DAHL,
Attorneys for Complainant.

The State of Texas,
County of Tarrant.

Before me, the undersigned authority, on this day personally appeared T. S. Christopher, one of the attorneys of record and attorney in fact for the complain-

ant, who as such has cognizance of the matters stated in the above and foregoing pleading, who being by me first duly sworn on his oath says that he is authorized to make oath to the foregoing Bill in Equity for Temporary Restraining Order and Temporary Injunction, that he knows the contents thereof, that he is familiar with and knows the facts therein alleged, that the allegations contained therein are true, except such matters as may be stated on information
16 and belief, and as to such matters he believes them to be true.

T. S. CHRISTOPHER.

Subscribed and sworn to before me on this the 17th day of January, A. D. 1936.

EDNA LEFLER,
Notary Public, Tarrant County, Texas.

FIAT OF JUDGE GRANTING TEMPORARY RESTRAINING ORDER.

17 Filed Jan. 17, 1936.

(Title Omitted.)

The within Bill of Complaint having been presented to and heard by the Judge of this Court at Chambers this 17th day of January, 1936, and it appearing to him from the facts therein stated that the complainant will suffer immediate and irreparable damages, and especially in that complainant may lose the valuable right of receiving a certificate from the Interstate Commerce Commission to operate a transportation service in interstate commerce if there is any interruption in his service; and further, especially in that if such facts should occur that valuable properties owned by the

complainant would become practically worthless; and further in that any interruption in service would tend to destroy the confidence of the general shipping public and greatly impair, if not destroy complainant's business; and further in that any interruption of service would prove extremely expensive to complainant without any return whatsoever therefrom, it appears from the complainant's Bill of Complaint that complainant is entitled to a Temporary Restraining Order, which same is within complainant's allegations and prayer; that delay will not be injurious to respondents, and that justice will be subserved by the granting of the Temporary Restraining Order prayed for.

It is Therefore Ordered that the respondents, Ernest O. Thompson, C. V. Terrell, Lon A. Smith, Walton D. Hood, W. B. Renfro, and Tom Miller, and each of them, individually and in their official capacity, their agents, servants, representatives, and employees, and either, any, and all of them, be and the same hereby are restrained from causing either directly or indirectly, or causing in any way the molestation, arrest, or interference with complainant's drivers and trucks, and from in any manner interfering with the operation of any trucks belonging to complainant while engaged in interstate commerce, and from in any way impeding, hindering, or interfering with complainant's business in the transportation of property in interstate commerce in any manner whatsoever upon complainant's executing in behalf of the respondents a bond with good and sufficient sureties in the sum of $1,000.00, conditioned as the law requires.

18

It is Therefore Ordered that the respondents, and each of them, shall appear in the Court room of the above named Court on the 24th day of January, 1936, to show cause, if any there be, why a Temporary Injunction should not be granted upon such Bill of Complaint effective until final decree in this suit.

Service of a certified copy of the complainant's bill herein and of this order will constitute good and sufficient service of the bill and this Temporary Restraining Order.

Dated this 17th day of January, A. D. 1936.

JAMES C. WILSON,
Judge United States District Court, Northern District of Texas.

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19 RESPONDENTS' MOTION TO DISMISS.

Filed Jan. 24, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now come the respondents, Ernest O. Thompson, C. V. Terrell, Lon A. Smith, Walton B. Hood, W. B. Renfro, and Tom Miller, and move the Court to dismiss the bill of complaint herein filed against them upon the following grounds, to-wit:

I.

The bill of complaint fails to state facts sufficient to constitute a cause of action in favor of complainant and against these defendants.

II.

The bill of complaint does not state facts sufficient to constitute a valid cause of action in equity against these respondents, either severally or jointly.

III.

It appears on the face of said bill of complaint that said bill of complaint is wholly without equity.

IV.

It appears on the face of the bill of complaint that complainant is not entitled to the relief prayed for in said complaint against these respondents, nor to any relief against these respondents arising from the facts alleged in said complaint.

20

V.

It appears from the bill of complaint that complainant is seeking to enjoin these respondents in their official capacities as officials of the State of Texas from performing and carrying out their statutory duties to protect, preserve and maintain certain property belonging to the State of Texas, to-wit, the public highways within the State of Texas, and, therefore, the complainant is not entitled to any relief.

VI.

It appears on the face of the bill of complaint that complainant is seeking to require these respondents as officials of the State of Texas to permit complainant to use certain property belonging to the State of Texas, to-wit, its highways, without at the same time applying to the Railroad Commission of Texas for a certificate of convenience and necessity, and upon hearing of such application proving or offering to prove that the highways in the State of Texas in their present state of repair sought to be traversed by applicant will stand the additional traffic burden that will be im-

posed thereon by the proposed motor carrier bus operation of applicant, (complainant herein), and without proving or offering to prove that the extraordinary use of the highways sought to be made by applicant will not impair the safe use of the highways of the State of Texas by the ordinary traveling public.

VII.

It appears from the face of the bill of complaint that complainant herein is contending that under and by virtue of the passage of the Motor Carrier Act, 1935, by Congress, that all State motor carrier regulatory laws, the jurisdiction of all State motor carrier regulatory officials and bodies, and all valid orders, rules and regulations that have been promulgated by such State regulatory officials and bodies have been superseded by the passage of the said Motor Carrier Act, 1935, by Congress, in so far as interstate commerce motor carrier operations are concerned,
21 as in such Act defined, and that the State of Texas, even though it is the builder and owner of its highways, has no right, authority or power to impose reasonable police regulations upon interstate commerce motor carrier operators for compensation and hire over its highways to effect the safe use of its highways by the ordinary traveling public, and to effect the preservation of its highways in a reasonable and suitable condition of repair; and while it is the contention of these respondents that such a construction intended to be placed on the Motor Carrier Act, 1935, by complainant is erroneous in the event, and only in the event, that this Court holds that such construction of the Motor Carrier Act is proper, these respondents insist that the Motor Carrier Act, 1935, contravenes the Fifth Amendment of the Constitution of the United States in that it takes private property, to-wit, the highways of the State of Texas, for a public use, to-wit,

interstate commerce motor carrier operations for compensation and hire, without just compensation therefor, and that said Motor Carrier Act, 1935, is under such construction unconstitutional and void.

Wherefore, these respondents pray that their motion to dismiss be sustained and that they be dismissed with their costs in this behalf incurred.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Counsel for Respondents.

RESPONDENTS' FIRST AMENDED ANSWER.

22 Filed April 30, 1936.

(Title Omitted.)

To the Honorable Judge of said Court:

Now comes respondents, Ernest O. Thompson, C. V. Terrell, Lon A. Smith, Walton D. Hood, W. B. Renfro and Tom Miller, and after first having had and obtained leave of the Court and file this their first amended answer in lieu of all answers heretofore filed herein, except their motion to dismiss and subject only to the action of the Court upon their motion to dismiss, and without waiving same but still insisting upon same, and file and present the following answer to the plaintiff's bill of complaint:

I.

Answering Paragraph I of complainant's bill, they admit the allegations contained therein.

II.

Answering Paragraph II, they admit the allegations of Paragraph II in so far as the nature of the controversy involved is concerned, but deny that complainant has been engaged in a bona fide operation as Common Carrier for hire in interstate or foreign commerce either prior to June 1, 1935, or since said time.

23

III.

Answering Paragraph III, of complainant's bill, they have no knowledge as to complainant's operations or use of the highways in the State of Oklahoma, or of his right and authority to operate in that State, and neither admit or deny his allegations in this respect, but deny that complainant is not engaged in the transportation of property for hire between points within the State of Texas, and allege the fact to be, that complainant for several years prior and subsequent to June 1, 1933, has been transporting commodities between various points within the State of Texas over the highways thereof in violation of the laws of the State, and in such transportation admit that he has operated over Federal Highways 75, 77, 80, 81, 290, 90, and 281. They deny that all of the highways which complainant has used within the State of Texas are federal aided highways, and neither admit or deny that he was authorized to use said highways within the State of Oklahoma, but deny that he had any authority to use said highways within the State of Texas, and allege the fact to be that he has been doing so in violation of the laws of the State of Texas. They deny that complainant has not engaged in and has not held himself out as engaging in the transportation of property between points within the State of Texas and over the highways thereof in violation of the law.

IV:

Answering Paragraph IV of complainant's bill, they admit the passage of the Motor Carrier Act of 1935, by the Congress of the United States, but deny that by the passage of said Act jurisdiction, power and authority to determine as to whether or not complainant and other parties desiring to use the highways of Texas shall be permitted to do so has been superceded by the passage of said Act by Congress, but allege the fact to be that notwithstanding the passage of said
24 Act by Congress, the respondent Railroad Commission, still has the jurisdiction and power to prohibit the use of the highways of Texas for the transportation of property for hire if such highways are not of proper construction or in proper condition to maintain said traffic, or if the contemplated use of said highways by the complainant would increase the dangers and hazards on said highways and congest the traffic thereon and unreasonably interfere with the use thereof by the public, and respondents further say that Article 911a, Vernon's Annotated Civil Statutes 1925, commonly referred to as the "Motor Carrier Bus Law of Texas" and Article 911b Vernon's Annotated Civil Statutes 1925, commonly referred to as the "Motor Carrier Truck Law of Texas," so far as such statutes effect the physical preservation of public highways of Texas and prevent an unreasonable interference by motor carriers for compensation and hire operated thereover with the use of such highways by the ordinary traveling public, were, at the time of their enactment, and now are, proper, reasonable, and necessary police regulations of the State of Texas, regulating the use of the public highways by Motor Carriers for compensation and hire thereover, and such statutes now remain in full force and effect to the extent that same effect the regulation of the use of the public highways of the State of Texas by Motor Carriers thereover for compensation and hire, whether

operating in intrastate commerce or interstate commerce, notwithstanding the passage of the Motor Carrier Act of 1935.

V.

Answering Paragraph V of complainant's bill, they deny that complainant is entitled to operate over the various highways of the State of Texas in the transportation of property and goods moving in interstate commerce, and that he is entitled to receive a certificate under said Act of Congress as a matter of
25 right under the provisions of Section 206 of said Act, for the reason as respondents allege that said complainant was not "in bona fide operation as a Common Carrier by motor vehicle on June 1, 1935," within the State of Texas and over the highways thereof, and deny that complainant under said Act has until the 12th day of February, 1936, within which to file an application with the Interstate Commerce Commission for a Certificate to engage in said transportation. They neither admit or deny that the complainant has taken active steps to secure said certificate, nor that he has practically completed his application and that same will be filed within the next ten days; they deny that complainant is entitled to a Certificate from the Interstate Commerce Commission under what is known as the Grandfather Clause of the Act of Congress, for the reason that said complainant is not now and never has been a bona fide operator as a Common Carrier for hire over the highways of the State of Texas, and therefore is not entitled to continue in such transportation until such time as the Interstate Commerce Commission may act upon any application which he may file. They deny that complainant has complied with all of the requirements of the Act of Congress and specifically deny that he has complied with all of the appropriate and applicable police regulations with the State of Texas with refer-

ence to his claimed operations in Interstate Commerce, but allege the fact to be that all of the operations of the complainant, except those hereinafter specifically mentioned, within the State of Texas have been consistently in violation of the laws of the State of Texas, and without any Certificate or Permit from the respondent Railroad Commission, as the law requires.

26

VI.

Answering Paragraph VI of complainant's bill, in this connection respondents allege that the following are the true facts in regard to complainant's operations within the State of Texas:

(a) In the year 1934 complainant filed with the respondent Railroad Commission of Texas an application for a Special Commodity Carrier Permit to haul *only* "livestock belonging to or being distributed by, or under authority of the Agricultural Department of the State of Texas between all Texas points," and under said application the respondent Railroad Commission of Texas on March 30, 1934, granted complainant a Permit to operate as a Special Commodity Carrier. A certified copy of the Order granting said permit being filed with this Answer as a part thereof, marked Exhibit "A"; that said Special Commodity Permit was on October 25, 1934, canceled by the Railroad Commission, as shown by certified copy of the Order canceling same, filed herewith, marked Exhibit "B" and made a part hereof.

(b) On the first day of May, 1934, complainant filed with the respondent Railroad Commission of Texas, an application for a certificate as a Common Carrier motor operator in Interstate Commerce, as shown by a certified copy of said application, filed herewith, marked Exhibit "C" and made a part hereof.

A hearing was had upon said application, after notice given, and testimony was introduced before said respondent, a copy of which is filed herewith, marked Exhibit "D," and made a part hereof. After said hearing and consideration of said application by the Commission, it entered its Order on July 14, 1934, denying said application, a copy of which is filed herewith, marked Exhibit "E" and made a part
27 hereof.

(c) Thereafter the complainant filed in the District Court of Travis County his appeal from said Order of the Commission denying his application, in a suit entitled E. A. McDonald v. The Railroad Commission of Texas, et al., No. 54134, in the District Court of Travis County, Texas, 98th Judicial District. A certified copy of his Petition in said cause is filed herewith, marked Exhibit "F", and made a part hereof. In said Cause the respondent Railroad Commission filed its Answer, a certified copy of which is filed herewith, marked Exhibit "G", and made a part hereof. Said Cause was heard by the District Court of Travis County, and judgment entered therein in favor of complainant, granting an injunction against the respondent Commission, a certified copy of which is filed herewith, marked Exhibit "H" and made a part hereof. The respondent Commission appealed from said judgment of the District Court to the Court of Civil Appeals of the Third Supreme Judicial District of Texas, and said Court reversed the Judgment of the Trial Court and dissolved the injunction which had been issued by said Court in favor of said complainant, as shown by certified copy of the Opinion of said Court, filed herewith, marked Exhibit "I" and made a part hereof. The time within which complainant had under the law to file a Motion for Rehearing in the Court of Civil Appeals has expired and therefore said Judge of the Court of Civil Appeals has become final.

(d) While said Appeal was pending in the Court of Civil Appeals complainant filed with the respondent Railroad Commission an application for a Common Carrier motor operator to engage in Intrastate Commerce within the State of Texas, as shown by certified copy of said application, filed herewith, marked Exhibit "J", and made a part hereof.

Wherefore respondents say that complainant, except as a special commodity carrier of livestock only is not now and never has been lawfully engaged in the transportation of interstate or foreign commerce over the highways of Texas, but all of his operations
28 in this respect have been in violation of the laws of the State and of the Orders of the respondent Railroad Commission.

Further answering Paragraph VI, respondents admit that they, acting under the statutes of the State of Texas and within the Act of Congress hereinbefore mentioned, are exercising their rightful powers of regulation of the complainant in the conduct of his transportation business within the State of Texas, and refused and still refuses to issue and deliver to him license, tags or numbers, for the reason that he has no authority to operate over the highways of this state, and they have threatened to and will arrest the drivers and operators of complainant unless and until he complies with the laws of the State of Texas in securing a certificate to operate over the highways thereof, either as a transporter of interstate or intrastate commerce, which said exercise of the jurisdiction and authority is within their rights, jurisdiction and powers under the Act of Congress hereinbefore mentioned.

VII.

Answering Paragraph VII, respondents deny that complainant is complying now or has ever complied

with the police requirements of the State of Texas, so as to permit him to operate in interstate commerce.

VIII.

Answering Paragraph VIII, respondents deny that complainant has ever been lawfully engaged in the transportation of property in interstate commerce as a Common Carrier, but as to the other allegations in said Paragraph VIII, they neither admit nor deny same, having no knowledge thereof.

IX.

Answering IX, the respondents aver that they have jurisdiction and authority to prevent complainant's trucks and motor vehicles from operating in interstate commerce within the State of Texas, unless
29 and until complainant secures from said respondent Railroad Commission a certificate to so operate, and they deny that complainant has endeavored to comply with or has complied with any of the laws of the State of Texas in the transaction of his business. They specially deny that he has caused public liability and property damage insurance to be issued and that same is now in full force and effect. They neither admit nor deny the allegations in Subdivision 2 of Paragraph IX, as to the mechanical condition of complainant's equipment and say they have no knowledge of same, but they allege the fact to be as shown by the testimony introduced before the Commission in complainant's applications for a Common Carrier certificate to operate in interstate commerce, and in the findings of fact of said respondent Commission, that the highways of Texas over which complainant seeks to operate are not in such condition as to justify the issuance of any permit or certificate to him, and allege the fact to be

that said highways are now congested to the extent that his operation would unreasonably interfere with the uses thereof by the traveling public. They deny the allegations of Subdivision 3 of Paragraph IX, and allege the fact to be that complainant has not offered to comply with the appropriate and applicable laws of the State of Texas, and the rules and regulations of the respondent Commission.

X.

Answering Paragraph X, they deny that complainant prior to June 1, 1935, or at any time since, has been lawfully engaged in the transportation of property moving in interstate commerce, but as to the allegations relating to the extent of his business they have no knowledge, and neither admit nor deny same.

XII.

Answering Paragraph XII, respondent says that they have no knowledge as to the facts alleged therein, and neither admit nor deny same.

XIII.

Answering Paragraph XIII, respondents deny that their action, or threatened action is unreasonable, arbitrary and without sanction of law state or federal, but allege the fact to be that notwithstanding the passage of the Motor Carrier Law by Congress, the respondent Railroad Commission of Texas, still retains jurisdiction and authority to determine as to whether or not complainant may be permitted to operate over the highways of Texas in the transportation of interstate commerce, and to determine as to whether or not the highways of the state are of such construction, or the traffic thereon is in such congested condition as that

complainant's operations would unreasonably interfere with the use of said highways by the traveling public, said jurisdiction and authority not having been taken away or destroyed or lessened by said Act of Congress, and not intended to be so taken away, destroyed or lessened. In this connection these respondents say, in answer to the allegations of complainant as to any action or threatened action by them, that they still have the jurisdiction and authority notwithstanding the passage of the Federal Motor Carrier law to determine as to each application for a certificate to engage in interstate commerce over the highways of Texas the following facts: (1) as to whether or not the highways over which the applicant proposes to operate are of such construction, or are in such condition of repair as to reasonably justify the issuance of a certificate permitting such operation; (2) to determine as to whether or not the highways over which an applicant to engage in interstate commerce proposes to operate are in such a congested condition in relation to traffic and that to grant an application to engage in interstate commerce over said highways would unreasonably interfere with the use of said highways by the traveling public; (3) to require the applicant to carry sufficient amount of insurance to protect the traveling public over said highways from injury or damage
31 occasioned by such operation; and (4) to require such applicant to conform to all statutory regulations relating to the weight of the load upon the vehicles used, the height, width and length of said vehicles in use, and these respondents say that they have not attempted to exercise and do not claim to have the jurisdiction or authority to exercise any other powers than those herein claimed as to right of the complainant to engage in interstate commerce over the highways of this state, and their refusal to issue plates to complainant is based solely upon his failure to comply with the orders of the respondent Commission in enforcing its jurisdiction and authority as herein set

out. The respondent Commission says that should said complainant present to the Commission an application to transport property for hire in interstate commerce over the highways of this State that said Commission will hear said application; that in said hearing the respondent Commission will require the applicant to show by facts, circumstances and conditions that the highways proposed to be used by said applicant are capable of withstanding the proposed use without undue injury and damage to the said highways and without unreasonable interference with the use of said highways by the general public for ordinary purposes; that respondent Commission will not require said applicant to prove that public convenience and necessity requires the proposed service and that said Commission will not consider the adequacy of the existing transportation facilities, or the effect the proposed operation will have upon the existing transportation facilties in determining whether or not it will authorize said applicant to operate over the highways of this State, but that said Commission will refuse to issue plates, tags, identification cards and authority to use said highways

32 until said plaintiff has procured authority from the Interstate Commerce Commission to so operate.

Wherefore, respondents having fully answered herein they pray that complainant's bill be dismissed.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General of Texas,
Attorneys for Respondents.

33 The State of Texas,
County of Travis.

Before me, the undersigned authority on this day personally appeared Tilden L. Childs, who upon his

oath deposes and says; that he is familiar with the allegations of fact contained in the foregoing Answer, and that same are true.

TILDEN L. CHILDS.

Sworn to and subscribed before me, this the 23 day of April, A. D. 1936.

MRS. BEULAH BURNS,
(Seal) Notary Public in and for Travis County, Texas.

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34 DECREE.

Filed July 17, 1936.

In the District Court of the United States for the Northern District of Texas, Fort Worth Division.

A. F. McDonald, Complainant,
vs. No. 864 in Equity.
Ernest O. Thompson, et al., Respondents.

The above entitled and numbered cause came on for further and final hearing at this term of Court, and whereupon came all parties, both complainant and respondent, in person and by their attorneys, whereupon all matters both of fact and of law were submitted to the Court, and the Court, after hearing the pleadings, the evidence, and the argument of counsel thereon, and after consideration of the same, is of the opinion that both the law and the facts are with the complainant.

It is, Therefore, Ordered, Adjudged and Decreed that:

1: The temporary restraining order entered in this cause on the 17th day of January, A. D. 1936, be, and

the same hereby is made permanent and perpetual against the respondents and each and all of them.

2. Respondents and each and all of them, together with their servants, agents, representatives, and attorneys, are further permanently and perpetually restrained and enjoined as in complainant's bill
37 prayed, and in particular from causing either directly or indirectly, or causing in any way, the molestation, arrest, or interference with the drivers of complainant's trucks, and from in any manner restraining or interfering with any truck belonging to complainant while engaged in interstate commerce, and from in any way impeding, hindering or interfering with the complainant's business in the transportation of property in interstate commerce in any manner whatsoever.

3. It is further ordered, adjudged, and decreed that all costs herein, as taxed by the Clerk of this Court, be taxed against the respondents jointly and severally and by them paid for which execution may issue in favor of the officers of this Court.

Dated this, the 16th day of July, A. D. 1936.

JAMES C. WILSON,
District Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW.

36 Filed July 15, 1936.

(Title Omitted.)

Findings of Fact.

1. Complainant is a citizen of the State of Texas engaged in the transportation of property for hire over

the highways of the States of Texas and Oklahoma exclusively in interstate commerce.

2. Respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, are the Railroad Commissioners of the State of Texas, collectively composing what is known as the Railroad Commission of the State of Texas. Respondent, Mark Marshall, is director of the Motor Transportation Division of the Railroad Commission of Texas, and Walton D. Hood, W. B. Renfro, and Tom Miller, are inspectors and law enforcement officers employed by the Railroad Commission of Texas, and act under the direction of the Railroad Commission of Texas.

3. The jurisdictional amount and threatened irreparable injury in the absence of relief by injunction have been established.

37 4. Respondents and each of them have caused the arrest of complainant's truck drivers and have delayed and tied up complainant's trucks, and have filed criminal complaints against complainant's drivers; and respondents and each of them threaten to and will continue in that way to interfere with and to put a stop to complainant's operations within the State of Texas.

5. That for a long time prior to June 1, 1935, and at all times since June 1, 1935, complainant has been continuously in bona fide operation engaged in the business of transporting property for hire over the highways of the States of Texas and Oklahoma exclusively in interstate commerce.

6. That in complainant's operation of motor vehicles over the highways of the State of Texas in the transportation of property for hire complainant used and now uses highways designated as Federal highways

Nos. 75, 77, 80, 81, 290, 90, and 281, and certain highways in the State of Oklahoma not the subject of controversy in this cause.

7. That all of the highways used by complainant are Federal aided highways except that portion of U. S. No. 281 between Three Rivers and Alice which is not on the Federal aided system, and that all of the highways hereinabove enumerated carry the above Federal designations.

8. That complainant filed an application with the Interstate Commerce Commission for an interstate certificate within the time fixed by the Federal Motor Carrier Act, 1935, or within the time required by the Interstate Commerce Commission of the United States under appropriate orders of said Interstate Commerce Commission extending the effective date of Section 206 thereof consistent with the terms of said Act.

38 9. That complainant has likewise filed with the Interstate Commerce Commission tariffs and rates as required by said Act and within the time for the filing of such rates and tariffs, or within the time prescribed and allowed by appropriate orders of the Interstate Commerce Commission consistent with the terms of said Act for the filing of such rates and tariffs.

10. That complainant has on file with the Railroad Commission of Texas public liability and property damage insurance approved by the Commission, or its authorized representative, as required by the Texas Motor Carrier Act (Acts 42nd Legislature, page 480, Chapt. 277, 1931.)

11. That complainant does not transport property moving in intrastate commerce.

12. That complainant's trucks have all been registered within the State of Texas under the requirements of Texas law; that all of said trucks are in good mechanical repair and condition; that all of said trucks are in such physical condition that they may be safely operated over the highways; and that all of said trucks in all respects comply with all police requirements under the applicable laws of the State of Texas; that complainant will suffer immediate and irreparable injury unless injunction issue from this Court as prayed for.

39 Conclusions of Law.

1. The Court concludes as a matter of law that this Court has jurisdiction of the parties and subject matter of this cause, and that the complainant has pleaded and proved jurisdiction and equity.

2. The Court concludes as a matter of law that what is known as the Motor Carrier Act, 1935, passed by the 74th Congress (Senate Bill 1629) became effective on August 9, 1935, except as to Section 227 thereof except to the power of the Interstate Commerce Commission to postpone the taking effect of any provision of the Act (other than Section 227) until such time after October 1, 1935, as the Commission shall prescribe, but not later than April 1, 1936; that said Act superseded the Texas motor truck laws (Acts 42nd Legislature, 1931, page 480, Chapt. 277) in so far as said Texas Act gave to the Railroad Commission of Texas power to forbid the use of Federal Highways Nos. 75, 77, 80, 81, 290, 90, and 281 by complainant's trucks when engaged exclusively in the transportation of property in interstate commerce.

3. The Court concludes that the phrase "if any such carrier or predecessor in interest was in bona fide

operation as a common carrier by motor vehicle on June 1, 1935" as used in Section 206 of the Motor Carrier Act, 1935 (Senate Bill 1629), properly construed relates to the actual physical continuous and regular operation of such carrier on June 1, 1935, and continuously ever since.

4. The Court concludes nevertheless that as a matter of law complainant was in bona fide operation on and prior to June 1, 1935, and has been continuously in such operation since said date.

40 5. The Court concludes that complainant has complied with all applicable police requirements of the State of Texas.

6. The Court concludes as a matter of law that complainant is entitled to a permanent injunction against the Railroad Commission of Texas and the individual members composing said Railroad Commission of Texas; Mark Marshall, the acting director of the Motor Transportation Division of the Railroad Commission of Texas; Walton D. Hood, W. B. Renfro, and Tom Miller, inspectors and law enforcement officers of the Railroad Commission of Texas together with all of their agents, representatives, and employees, enjoining and restraining respondents and each of them, their agents, employees, and representatives from molesting or in any way interfering with complainant's operation within the State of Texas in interstate transportation of property by motor truck for hire.

Dated and signed at Fort Worth, Texas, this 14th day of July, A. D. 1936.

JAMES C. WILSON,
United States District Judge.

41 MOTION TO AMEND DECREE.

Filed Oct. 13, 1936.

(Title Omitted.)

Now come the respondents in the above entitled and numbered cause and show to the Court:

I.

That by the decree made in this cause and dated the 16th day of July, A. D. 1936, it was decreed:

"The above entitled and numbered cause came on for further and final hearing at this term of Court, and whereupon came all parties, both complainant and respondent, in person and by their attorneys, whereupon all matters both of fact and of law were submitted to the Court, and the Court, after hearing the pleadings, the evidence, and the argument of counsel thereon, and after consideration of the same, is of the opinion that both the law and the facts are with the complainant.

It is Therefore Ordered, Adjudged and Decreed that:

1. The temporary restraining order entered in this cause on the 17th day of January, A. D. 1936, be, and the same hereby is made permanent and perpetual against the respondents and each and all of them.

2. Respondents and each and all of them, together with their servants, agents, representatives, and attorneys, are further permanently and perpetually restrained and enjoined as in complainant's bill prayed, and in particular from causing either directly or in-

directly, or causing in any way the molestation, arrest, or interference with the drivers of complainant's trucks, and from in any manner restraining or interferring with any truck belonging to complainant while engaged in interstate commerce, and from in
42 any way impeding, hindering, or interfering with the complainant's business in the transportation of property in interstate commerce in any manner whatsoever.

3. It is further ordered, adjudged, and decreed that all costs herein, as taxed by the Clerk of this Court, be taxed against the respondents jointly and severally and by them paid for which execution may issue in favor of the officers of this Court.

Dated this the 16th day of July, A. D. 1936."

II.

Said decree has been duly entered of record in the minutes of this Court.

III.

Such decree was so entered of record without any opportunity on the part of the respondents to read same and since the entry thereof these respondents have discovered that the said decree omits to recite: (1) The due order of procedure of the Court and the various steps taken in the hearing and determination of this litigation. (2) That respondents first presented their motion to dismiss complainant's Bill in Equity, which motion was by the Court denied, and to which action of the Court respondents excepted, all of which things were done.

IV.

Further, since the entry of said decree these respondents have discovered that the judgment grant-

ing the permanent injunction herein enjoins the respondents, and each and all of them, their servants, agents, representatives and "attorneys" from ..... "interferring with the complainant's business in the transportation of property in interstate commerce in any manner whatsoever," and it is apparent from the pleadings on file herein that respondents' attorneys are not parties to this law suit.

43 V.

Further, respondents have discovered that the decree heretofore entered herein does not recite that the respondents, each and all, severally excepted to the rulings of the Court as such rulings are reflected in such decree.

Wherefore, respondents move to the Court that the said decree may be corrected by amending same to comply with the above mentioned omissions and irregularities or that the Court make such other orders in the premises as to the Court may seem meet.

Dated this the 13 day of October, A. D. 1936.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Respondents.

WAIVER OF SERVICE OF NOTICE OF MOTION TO AMEND DECREE.

44 Filed Oct. 13, 1936.

(Title Omitted.)

Respondents having filed their motion to Amend the Decree entered herein on July 16, 1936, and having

furnished the undersigned attorneys of record for complainant, A. E. McDonald, with a copy of such motion, the said complainant A. E. McDonlad, by his attorneys of record, hereby waives the service of a copy of such motion upon him or them and hereby agrees that such motion may be heard, considered, and acted upon at any time without further notice to him or them.

Dated this the 13 day of October, A. D. 1936.

A. E. McDONALD,
By T. S. CHRISTOPHER,
PRICE & CHRISTOPHER,
WM. E. DAHL,
Attorneys of Record for A. E. McDonald.

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45 ORDER AMENDING DECREE.

Filed October 13, 1936.

In the United States District Court for the Northern District of Texas, Fort Worth Division.

A. E. McDonald, Complainant,
vs. No. 864 in Equity.
Ernest O. Thompson, et al., Respondents.

Complainant having waived service of a copy of respondent's motion to amend the decree rendered herein on the 16th day of July, A. D. 1936, and complainant having agreed that such motion might be taken up for consideration at any time, such motion came on to be heard this the 13 day of October, A. D. 1936, and upon consideration thereof, it is ordered, adjudged and decreed that said motion be in all things

granted and that said decree be, and the same hereby is, amended to read as follows, to-wit:

The above entitled and numbered cause came on for hearing for preliminary injunction on January 25, 1936, and all parties, either in person or by their respective attorneys of record, appeared and announced ready on the preliminary injunction hearing; respondents' announcement being subject to their Motion to Dismiss, which was first presented but the Court withheld its ruling on same, stating that such Motion to Dismiss would be determined with the other issues of the case. Thereupon the cause proceeded to trial on the preliminary injunction on complainant's Bill of Complaint, respondents' Original Answer, and proofs consisting of numerous affidavits of various persons, offered by the respective parties; at the close of the offering proofs, the Court announced that the matter of granting the preliminary injunction would be taken
46 under advisement, and that the restraining order theretofore issued in the cause would be extended until the matter of the granting of the preliminary injunction was determined;

On the 30th day of April, A. D. 1936, pursuant to an agreed setting this cause came on to be heard on its merits and for permanent injunction, and all parties appeared, either in person or by their respective attorneys of record, and, leave of the Court having been duly had, respondents filed their First Amended Answer; all parties then announced ready for trial, respondents' announcement being subject to their Motion to Dismiss, which was first presented but the Court again withheld its ruling on same, stating that such Motion to Dismiss would be determined with the other issues of the case, and it was agreed that the proofs offered in evidence on January 25, 1936, on the hearing on preliminary injunction, would be considered as in evidence on the trial on the merits; the

respective parties then offered their respective additional proofs at the close of which the Court heard the oral argument of counsel for the respective parties; which argument being concluded, the Court announced that the matter would be taken under advisement. Now upon consideration of all the above recited proceedings, it is this the 16th day of July, A. D. 1936, ordered, adjudged and decreed as follows, namely;

That the respondents' Motion to Dismiss Complainant's Bill of Complaint be, and the same hereby is, denied, to which ruling of the Court, respondents then and there excepted;

That the temporary restraining order entered in this cause on the 17th day of January, A. D. 1936, be, and the same hereby is, made permanent and perpetual against the respondents and each and all of them;

47 That respondents and each and all of them, together with their servants, agents, and representatives are further permanently and perpetually restrained and enjoined as in complainant's bill prayed, and in particular from causing either directly or indirectly or causing in any way the molestation, arrest, or interference with the drivers of complainant's trucks, and from in any manner restraining or interfering with any truck belonging to complainant while engaged in interstate commerce, and from in any way impeding, hindering, or interfering with the complainant's business in the transportation of property in interstate commerce in any manner whatsoever.

It is further ordered, adjudged and decreed, that all costs herein, as taxed by the Clerk of this Court, be taxed against the respondents jointly and severally and by them paid for which execution may issue in favor of the officers of this Court, to all of which rulings of the Court, respondents, each and all severally excepted.

It is further ordered that the said decree, except as herein amended, be, and the same hereby is, in full force and effect, this amendment to relate back to the date of the original decree.

Dated this the 13 day of October, A. D. 1936.

JAMES C. WILSON,
United States District Judge.

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48 PETITION FOR APPEAL.

Filed October 13, 1936.

(Title Omitted.)

Now come Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, respondents in the above entitled and numbered cause, and each feeling himself aggrieved by the final decree made and entered in this cause on July 16th, 1936, as amended by order made and entered on October 13, A. D. 1936, granting to complainant a permanent injunction against respondents, hereby pray that an appeal be allowed to them from said decree to the United States Circuit Court of Appeals for the Fifth Circuit, and in connection with this petition, petitioners herewith attach and present their assignment of errors.

These respondents each pray that his appeal be allowed, that a citation be issued in accordance with law, and that an authenticated transcript of the record, proceedings and papers on the trial, and on which said decree was based, be forwarded to the United States Circuit Court of Appeals for the Fifth Circuit setting at New Orleans, Louisiana.

49 Your petitioners further pray that an order be made fixing the amount of security to be given by them, conditioned as provided by law, in order to prosecute this appeal.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Respondents.

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50 ASSIGNMENT OF ERRORS.

Filed Oct. 13, 1936.

(Title Omitted.)

On appeal from the final decree herein entered on July 16th, A. D. 1936, as amended by order made and entered on October 13, A. D. 1936, granting the complainant a permanent injunction against the respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, said respondents, and each of them, say that said final decree is erroneous and unjust to said respondents, and each of them, and assign and file the following Assignment of Errors upon which they will rely on appeal to the United States Circuit Court of Appeals for the Fifth Circuit for the reversal of said decree:

1. The Court erred in denying respondents' Motion to Dismiss Complainant's Bill of Complaint.

2. The Court erred in entering the final decree against respondents upon the pleadings.

3. The Court erred in entering the final decree in favor of complainant on the facts found from the pleadings.

51 4. The Court erred in refusing to admit in evidence in toto the affidavit of George A. Knapp, relating to the physical conditions of the various highways of the Designated State Highway System of the State of Texas and the ability of such highways to withstand traffic burdens moving thereover, having admitted only that portion of such affidavit which related to the physical conditions of the particular highways over which complainant sought to operate his motor vehicles in his interstate common carrier motor carrier transportation operation for compensation and hire, and the ability of such particular highways to withstand traffic burden moving thereover, such affidavit reading as follows, to-wit:

52 State of Texas,
County of Harris:

Before me, the undersigned authority, on this day personally appeared George A. Knapp, who by me being duly sworn, did on his oath depose and say:

My name is George A. Knapp, and my residence is at Houston, Texas. I am now and have been continuously during the past thirteen years, engaged by the Southern Pacific Lines in Texas and Louisiana as special engineer on original research work. I was graduated from the Baltimore Polytechnic Institute in 1899 and have practiced Civil Engineering continuously since then both in the United States and abroad. About one half of this period has been devoted to railroad engineering work, including reconnaissance, preliminary and location surveys, construction, maintenance and valuation, the other half being divided between a general engineering practice which included the design and construction of highway, drainage, irrigation

and structural works. As Lieutenant-Colonel of Engineers for approximately 2½ years, I commanded the 315th Regiment of Engineers of the 90th Division during its participation in the World War.

For practically the entire period from December, 1930, until the present time I have been engaged in a study of the various branches of highway engineering, the design, construction and maintenance of pavements and bridges with special reference to their adequacy in carrying various types of motor vehicles from the heavier trucks to the lighter passenger automobiles. My studies were based, primarily upon the design of the highways and bridges of the state of Texas as shown by the records of the State Highway Department, and upon their adequacy, for the traffic moving over them, which was ascertained by me in personal inspection frequently made during this entire period. These studies were amplified to include cognizance of the experiments and investigations pertaining to similar questions as conducted by the United States Bureau of Public Roads and other official agencies.

As at present constituted, the highway system of Texas comprises a total length of approximately 190,000 miles which includes the state designated
53 highways having a mileage of 21,046, being approximately 11 percent of the total. The state designated highway system as composed includes a substantially large mileage of roads which in 1917 when the Texas State Highway Commission was created, were carved out of the county roads as they then existed. Highway requirements, considering the size and weight of the vehicles using the highways at that time, were adapted only to light automobiles, an occasional light truck and horse drawn vehicles. The best evidence of this fact is that the highway bridges were designed almost uniformly at that time

for a safe load of 5 tons. While these inferior highways inherited by the State Highway Department from the counties, have in most instances been materially improved and in many cases completely replaced by pavements of modern design, nevertheless, there are considerable lengths of the old roads which still remain and which occur at intervals throughout the present state system. These pavements may be identified by their non rigid types of constructions, their widths being invariably 18 feet or less, their sharp curves, steep grades, high crowns, irregular surfaces, eroded edges which may or may not have been patched, narrow earth shoulders, and lightly constructed bridges. The highways with which this affidavit is concerned are identified in detail in Exibits 1 and 1-A, hereto attached, and include substantial lengths of those old road types scattered throughout their length.

In November, 1932, I first completed a study of certain of the official records of the maintenance section of the Texas State Highway Department at Austin, Texas, which studies have been revised from time to time in accordance with the changed condition and description of the highways concerned,—the latest revision being as of April, 1936. These studies took cognizance of the identity, mileage and width of each of the forty distinct types of pavement and surface of the state designated highway system. These recorded data are checked by frequent personal field inspections, noting details of wear and traffic conditions. The purpose of the study was the segregation of the types so identified into five groups, the types composing each group having similar characteristics of design and load carrying capacity, these groups being (1) Earth Surface; (2) Gravel, Shell, Calliche, Iron Ore soil surfaces, etc., without bituminous or waterproof topping, (3) Bituminous topping on Gravel, Calliche, Macadam, etc.; (4) Asphalt topping on gravel Calliche, Macadam, etc.; (5) Concrete pavements, also

the further separation of these five groups into two principal classifications identified and referred to herein as "Rigid Types," being all of those constructed of concrete in some form, and "Non-rigid Types," being all forms of road pavement or surface
54 other than concrete.

Reference is made in this connection, to Exhibits 1 and 1-A attached hereto and made a part hereof.

Exhibit 1 is a description of highway types in the entire state designated highway system of Texas considered under the groups and classifications discussed above.

Exhibit 1-A is a description of highway types in the routes designated in the application filed by A. E. McDonald with the Texas Railroad Commission, the highway types being grouped and classified as in Exhibit 1.

The summary on the last page of each of Exhibits 1 and 1-A shows that the total highway mileage represented by each Exhibit is divided into the general groups identified above as follows:

	Exhibit 1.	Exhibit 1-A.
Earth surface (both improved and unimproved)	26%	3%
Gravel, iron ore soil, caliche surface, etc.	6%	2%
Bituminous topping on gravel, macadam, etc.	34%	23%
Asphalt topping on gravel, macadam, etc.	10%	14%
Concrete pavement	21%	52%
Distance through cities	3%	6%
Total	100%	100%

These groups are further classified as between Rigid Types and Non-Rigid Types as follows:

	Exhibit 1.	Exhibit 1-A.
Rigid Types (Concrete)	21%	52%
Non-Rigid Types (All other than concrete)	76%	42%
Distance through cities	3%	6%
Total	100%	100%

Attention is directed to the fact that the percentage of Non-Rigid Types in the total state designated highway mileage covered by Exhibit 1 is greatly larger than that of the rigid types and, in the case of the highways covered by the McDonald Application, Exhibit 1-A, is almost as large, thus identifying a basis of highway inadequacy as discussed below:

Exhibits 2, 2-A, 3 and 3-A attached hereto and made a part hereof are described as follows:

Exhibit 2 shows the width of Non-Rigid pavements, excepting earth in the entire state designated
55 highway system of Texas. The exhibit shows a total length of non-rigid pavements, excepting earth, of 10,618 miles, 23 percent of which are 16 feet wide or less; 41 percent from 16 to 18 feet wide, or a total of 64 percent which are 18 feet wide or less.

Exhibit 2-A shows the width of the non-rigid pavements, excepting earth in the highway routes specified in the application filed by A. E. McDonald with the Texas Railroad Commission, the total length of which non-rigid pavements is 487.1 miles of which 15 percent are 16 feet or less, 60 percent are from 16 to 18 feet wide and a total of 75 percent are 18 feet wide or less.

Exhibit 3 shows the width of rigid or concrete pavements of the state designated highway system, the total length of which rigid pavements is 4,437 miles of which 4 percent are 16 feet or less, 63 percent are from 16 to 18 feet in width, or a total of 67 percent which are 18 feet wide or less.

Exhibit 3-A shows the width of rigid pavements in routes specified in the application filed by A. E. McDonald, the total length of which rigid pavements is 607.5 miles of which 9 percent are 16 feet or less, 28 percent are from 16 to 18 feet wide, or a total of 37 percent which are 18 feet wide or less.

The large proportions of the total of both rigid and non-rigid pavements, which are shown in these Exhibits to be 18 feet wide or less, identifies their inadequacy for the use of vehicles having a width in excess of 7 feet when consideration is given to the following:

The usual width of private passenger automobile is 6 feet or less. A minimum width of two lane pavement for the use of such vehicles may not be reasonably less than 16 feet. It is then obvious, in order to secure the same degree of mobility, clearance, and safety, that for vehicles 7 feet wide, the pavement would have to be 18 feet wide and for the same reason, vehicles 8 feet wide would require a pavement width of 20 feet. Numerous measurements of the heavy commercial trucks made by me, show that this class of vehicle almost invariably measures the full width of 8 feet permitted by Texas law. These pavements of inadequate width for the use of the wider vehicles occur at frequent intervals throughout the length of practically all highways of the state including those in the routes specified in the application of A. E. McDonald.

Considerations of pavement type and width, as affecting the adequacy of the pavements to sustain the heavier loads imposed by commercial trucks and, as affecting the safe use of the highways by the public, are discussed in the following:

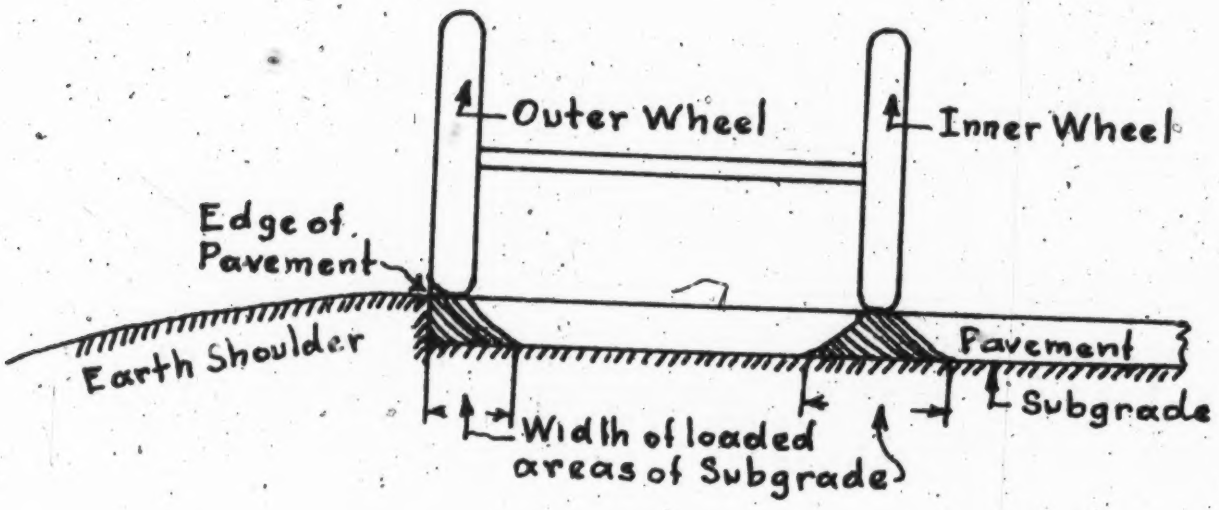
(1) The rigid or concreted types of pavements, as now designed are possessed of great strength
56 or rigidity, which quality permits of the loads passing over the road to be distributed over large areas of the subgrade, (the earth upon which the pavement rests), thereby imposing low unit loading (per square inch) upon the subgrade.

(2) All non-rigid types of pavement lack in a large degree the quality of rigidity as may be demonstrated by the fact that a slab of any non rigid type pavement if suspended by supports placed at each end, will break of its own weight. Hence, the adequacy of all non-rigid type pavements to carry the loads imposed by traffic upon them depend almost entirely upon the load sustaining ability of the subgrade.

(3) Approximately 75 to 80 percent of the soils forming the subgrades supporting pavements in the eastern one third of the State of Texas, and a very considerable proportion of the middle one third, are classified as clay, gumbo or silt which soils have the quality of absorbing water rapidly which fact, in varying large degree, destroys their load carrying ability. This circumstance, taken together with the greatly heavier rainfall of the eastern third of the state renders the subgrades composed of such soils practically unfit for use with the non-rigid type pavements, except for light weight vehicles.

(4) The adequate width of a non-rigid type pavement is an absolutely essential consideration entering into its ability to support the loads imposed by the heavier traffic is best demonstrated by showing the manner whereby the wheel load concentrated on the surface of the non-rigid pavement is transmitted through the pavement to the subgrade by a truncated cone of forces with the base of the cone resting upon the subgrade.

The following sketch illustrates this action:


Outer Wheel
Inner Wheel
Edge of Pavement
Earth Shoulder
Pavement
Subgrade
Width of loaded areas of Subgrade

57 There the pavement is of such narrow width as to render necessary the use of its edges by passing vehicles as shown in the sketch, it is apparent that the load of the inner wheel is distributed to the subgrade over an area almost twice as great as is the case of the outer wheel resting upon the edge of the pavement. In other words, the subgrade at the edge of the pavement carries almost twice the load per square inch of area as that under the inner wheel.

Narrow widths of pavements as identified in Exhibits 2, 2-A, 3 and 3-A, cause frequent use of the earth shoulders adjoining by passing vehicles, which, during periods of prolonged wet weather causes the shoulders to become deeply rutted, thus impounding water at the edge of the pavement which water is rapidly absorbed by clay, gumbo and silt soils forming the subgrade under the edge of the pavement. It is therefore apparent that under these conditions, the subgrade under the non-rigid pavement is subjected to its maximum load at a point where the subgrade is least able to sustain it. The result is eroded and sunken shoulders of the pavement with corresponding high crowns along the center, the surface being pushed into wavelike irregularities. These conditions represent the direct result of an overloaded subgrade caused by trucks, the maximum wheel load of which, under Texas laws, is approximately five times greater than that of a heavy private passenger automobile. Once begun these conditions rapidly become worse,—the eroded shoulders further narrowing an already inadequate width of pavement, their sunken condition furnishing a continuous basis for holding water, the high crown further increasing the load upon the outer wheel by excessively tilting the vehicle, and the impacts of heavy loads being increased by the surface irregularity.

(5) The thickness of non-rigid types of pavement as constructed in Texas varies greatly,—the tendency

during the last three or four years being toward considerably thicker pavement than prior to this time. The present standard base varies from 7 to 10 inches of compacted thickness, depending upon the nature of the subgrade. Most of the mileage of the non-rigid type bases are considerably under this, and thicknesses of as little as 2 inches are found on the older roads. The topping for bituminous treated pavement varies from 3/8 to 3/4 of an inch in thickness, while that of the asphalt topping varies from 1 to 2 inches in thickness. The primary purpose served by the topping is to render the pavement impervious to water in order that the subgrade may be kept dry, thereby increasing its load sustaining power, and secondarily, to prevent raveling of the pavement during times of dry
58 weather with its resulting loss of paving material. The following may be stated to be the approximate thickness of the various types of pavement as classified in the exhibits hereto attached:

Type of Pavement.	Total Thickness Incl. Topping (Compacted)
Gravel, shell, caliche, etc.	Average, 6 inches.
Older roads, gravel, shell, caliche, etc., with bituminous topping	Average, 7 inches.
Newer roads, gravel, shell, caliche, etc., with bituminous topping	Average, 8 inches.
Older roads, gravel, macadam, etc., with asphalt topping ...	Average, 8 inches.
Newer roads, gravel, macadam, etc., with asphalt topping ...	Average, 9½ inches.

The inadequacy of these thicknesses to support heavy truck loads becomes apparent when compared with the required thicknesses of concrete under similar loading conditions.

Numerous experiments have been conducted by the Bureau of Public Roads of the U. S. Department of Agriculture showing the inter-relationship of the load, road and subgrade. The results of one of these experiments were reported in "Public Roads," a journal of highway research published by the Bureau of Public Roads, being Vol. 10, No. 3, dated May, 1929, which on page 37 thereof sets forth the following: 'For the purpose of this discussion road surfaces are divided into those which offer very little or no resistance against bending (flexible or non-rigid types, including macadam), and those which have appreciable 'beam' strength (concrete roads, etc.)

Both field and laboratory observations demonstrate that new water bound macadams, as compared with rigid types, afford relatively small load distribution—The curves resulting from tests at the Arlington Experiment Station show that a load placed directly on a concrete slab (8 ft. square) exerts a unit pressure on a clay subgrade equal to but one-eighth of that exerted by the same load when placed directly on a crushed stone layer of equal area and thickness. The same experiments indicate that a load placed on a concrete slab four inches thick exerts a unit pressure upon a clay base equal to that exerted by the same load when placed on a crushed stone layer 42 inches thick.'

59 In other words,—with a given wheel load, it would be necessary to have a crushed stone layer 42 inches thick to secure the same unit loading on the subgrade as would be the case under 4 inch concrete slab.

It is significant that the nature of the subgrade used in this experiment, being clay, is similar to that referred to above as existing in a larger part of Texas. Concrete pavement design for thickness required to support any

particular load is based upon definite principles which are expressed in the 'Agg' formula recognized by all highway authorities. The net load limit of 7,000 lbs. as prescribed by Texas laws, if carried in an adequate vehicle, would approximate a gross load vehicle and load of 14,000 lbs. which, under maximum loading conditions, assumed by the Texas State Highway Department of 80 per cent on the rear axle of a truck, would produce an axle load of 11,200 lbs. and a wheel load of 5,600 lbs. Likewise, this wheel load of a truck tractor weighing 3,500 pounds and of a semi trailer weighing 4,000 pounds, carrying a net load of 7,000 pounds under maximum conditions of loading, will be approximately 5,200 or about 7 percent less. The required shoulder thickness of concrete pavement to support the wheel load of 5,200 pounds would be 7¼ inches, which is almost double the 4 inch thickness of concrete cited in the experiment noted above. Considering that the thickness of the older non-rigid pavements is not more than 7 to 8 inches, these experiments prove conclusively that the flexible types of highways, especially during times of prolonged wet weather, are inadequate to carry the maximum loads prescribed by the Texas laws. Frequent highway inspections made by me during periods of wet weather, have demonstrated the conclusions reached by the experiments to have been correct.

I have made a partial survey of the bridges located upon the highways shown in Exhibits 1 and 1-A. The purpose of this survey was to identify those bridges which were built by the counties prior to the acquisition by the State Highway Department of the highways upon which these bridges are located, and which bridges are shown by actual measurements and computations made by me to have a safe loading capacity less than that required for the maximum net loads of 7,000 pounds allowed under the present laws of the state which, including the weight of an adequate vehicle totals approximately 14,000 pounds or 7 tons.

Exhibits 4 and 4-A, attached hereto and made a part hereof are described as follows:

Exhibit 4 identifies a total of 317 highway bridges having a safe loading capacity of less than 7 tons which are located upon state designated highways of Texas as identified in Exhibit 1.

60 Exhibit 4-A identifies a total of 27 highway bridges having a safe loading capacity of less than 7 tons which are located upon highways specified in application of A. E. McDonald filed with the Texas Railroad Commission.

This survey was made in connection with my highway inspections, but has been revised as of April 17, 1936, all such bridges which have been renewed or materially strengthened having been excluded from Exhibits 4 and 4-A.

The Exhibit shows:

The survey number.

The location of the bridge with reference to the adjoining towns.

The name of the stream crossing.

Whether a one or a two way bridge.

The safe loading capacity in tons in terms of their condition when new.

The present physical condition of the bridge as qualified by good, fair or poor.

The safe loading capacity shown herein is computed by identical methods and formula used by the Bridge

Design Section of the Texas State Highway Department, i. e., by computing the load required to break through the bridge and then dividing this by a factor of safety of 4. The purpose of the factor of safety, which is common to all proper structural design, is to take care of the physical depreciation incidental to the effect of the elements and use, as also imperfections in material and workmanship which are not apparent. Loads in excess of the safe loading capacity as computed for its condition when new, especially considering a minimum age of sixteen years for all of these bridges most of which embody wood construction in some form, must necessarily decrease the factor of safety built into them, which fact invites the collapse of the structure. Such failure, in the case of a two way bridge, may involve other users than the offender. Numerous instances of the collapse of such bridges due to excessive loads are shown in the records of the State Highway Department and their continued abuse from such overloads is certain, sooner or later to have similar results. The inadequacy of these bridges may be judged by the fact that the present standard requirement of highway bridge design in Texas, using identical methods of computation, is a safe loading capacity of fifteen tons.

A very large proportion of the bridges shown in Exhibits 4 and 4-A are incapable of carrying two-way traffic and are placarded by the State Highway Department as a 'One Way Bridge,' having a width of less than 16 feet. Other included in this list
61 and many not included but also located along the highway specifically referred to herein, have a width between 16 and 18 feet and are placarded by the State Highway Department as 'Narrow Bridge.' Situated as they are at the bottom of hills which renders vehicular control more than ordinarily difficult, their use by trucks much wider and longer than are the passenger cars, renders apparent the

additional hazard arising out of any increase in truck traffic.

Attached hereto and made a part hereof is Exhibit 5, which is described as being a comparison of truck density in Texas with that in the United States for the years 1915 to 1935 inclusive. Truck density as used herein, is defined as the ratio of the number of trucks to the total number of motor vehicles registered. The ratio of truck density of Texas to that of the United States is designated in the exhibit as the "Comparative Truck Density," being shown in the last column thereof. The exhibit shows that the truck density of Texas was 22 percent of that of the average of the United States in 1915 and gradually, year by year, increased, until, in 1929, it passed that of the United States, and in 1935 had risen to 126 percent thereof.

Exhibit 6, attached hereto and made a part hereof, sets forth the Texas motor vehicle registrations by classes of vehicles for the years 1917 to 1935 inclusive, the date being taken from the biennial report of the Texas State Highway Department. Also shown on the lower half of the Exhibit is a statement which indicates the comparative growths of passenger car and truck traffic in Texas from the year 1925 to 1935 inclusive. Considering the passenger car registrations for 1925 as 100 percent, it will be noted that peak registration was reached in 1930 at which time registrations were 136 percent of the 1925 figures; also, while the year 1935 showed some recovery from the slump which occurred during the years between that passenger car registrations for 1935, which were 125 percent of the 1925 registrations, had not regained the losses since the peak in 1929.

Truck registrations, on the other hand, are shown by the exhibit to have increased annually each year

between 1925 and 1935, at a much greater rate than was shown by passenger cars, registrations for 1935 being 280 percent of those 1925. It will also be noted that decreased truck registrations for 1932 and 1933 were comparatively slight and that 1935 registrations were substantially greater than those shown in the previous peak in 1931.

Exhibit 7, attached hereto and made a part hereof, shows the growth of Common Contract and Special Commodity Carrier operations in Texas from 1932 to 1935 inclusive, being predicated upon data contained in the annual reports of the Motor Transport
62 Division of the Texas Railroad Commission, certified copies of which reports are hereto attached. It will be noted that similar data prior to 1932 are not obtainable due to a change in Texas law in that year. The exhibit will show that, based upon the total number of trucks authorized by the Texas Railroad Commission to be operated and the average annual truck mileage of vehicles actually operated, the potential truck mileage percent increased from 100 percent in 1932 to 156 percent in 1935. This large increase is partly accounted for by the increase in the number of carrier-for-hire trucks authorized being 3,075 in 1932 and 3,404 in 1935. It is principally accounted for, however, by the large increase in the average annual truck mileage run, per truck operated, being 22,001 miles in 1932 and 31,067 miles in 1935.

Summing up, Exhibit 5, 6, and 7 show respectively:

That truck density in Texas increased each successive year, except one, from 1915 when Texas truck density was 22% of that of the average of the United States, to 126% in 1935.

That, while passenger car registrations in Texas increased 25 percent between 1925 and 1935, Texas truck registrations increased 180 percent.

That truck miles of Common, Contract, and Special Commodity Carrier operations authorized by the Texas Railroad Commission increased 56 percent in the four years 1932 to 1935 inclusive.

Attached hereto and made a part hereof is Exhibit 8 which sets forth the population and motor vehicle registrations in the counties traversed by the identical highways shown in Exhibit 1-A, being those highways specified in the application of A. E. McDonald filed with the Texas Railroad Commission, as also a comparison of the population and motor vehicle registrations of such counties with similar data for the entire state of Texas. The summary of Exhibit 8 shows that while the counties along the routes applies for number only 13 percent of the total counties of the entire state, the population of such counties amounts to 38 percent and the motor vehicle registrations 41 per cent of the entire state. This study is not intended to show actual traffic over the highways, but rather the fact that these highways traverse a densely populated portion of the state, being approximately 3 times the average of the entire state, while the density of motor vehicle registrations is even greater. All of the traffic represented by these motor vehicle registrations is potential to the highways in their respective counties which are sought to be traversed by the applicant. Because of the fact that congestion on any highway may not be considered from the view point of average use, but
63 rather maximum, or peak use, the facts of such greatly heavier density of population and motor vehicle registrations become significant in this case. It is to be noted that potential traffic from adjoining counties and from outside the State, all of which forms a substantial part of the actual traffic along these routes, has been omitted from the study.

All of the foregoing is offered as evidence identifying inadequacies in the highway and bridges of the

state designated highway system to sustain heavy truck traffic without creating conditions which will unreasonably interfere with the public use of such highways and bridges.

GEO. A. KNAPP.

Sworn and subscribed to before me this 29 day of April, A. D. 1936.

J. ARTHUR MILLER,
Notary Public in and for
Harris County, Texas.

EXHIBIT No. 1.

Docket No. 864. Witness: Knapp.

Description of Highway Types in State Designated Highway System of Texas.

As Verified by Personal Inspection of Geo. A. Knapp on the Ground.

From	To	Hwy. No.	Total Miles All Types	Earth Surf.	Type of Gravel, Etc.	Highway Surface—Miles Bitu. Top	Asph. Top	Concrete	Thru Cities
N. Mex Line	Texarkana	1	859.9	62.4	3.0	321.1	187.0	226.6	49.8
Abilene	Jct. #15	1A	25.2	...	...	...	...	25.2	...
Jct. #1	Dallas	1B	4.8	...	0.2	...	...	3.3	1.3
Ringgold	Laredo	2	511.3	19.9	35.7	122.2	158.2	140.5	34.8
Burleson	Itasca	2A	37.8	...	...	35.9	...	...	1.9
Van Horn	Sabine R.	3	790.6	102.0	3.9	301.1	175.6	179.4	28.6
Seguin	Waelder	3A	46.9	...	...	...	...	44.9	2.0
Okla. Line	Boca Chica	4	835.6	329.4	15.5	111.0	97.0	264.0	18.7
New Mex. Line	Texarkana	5	636.2	136.4	41.1	99.5	18.4	306.5	34.3
Red R. Br.	Galveston	6	379.8	11.5	...	90.3	21.7	219.1	37.2
New Mex. Line	Joaquin	7	549.9	150.3	15.0	281.8	...	86.4	16.4
Ark. Line	Pt. Arthur	8	302.5	56.9	10.4	141.9	37.2	44.6	11.5
Stratford	Corpus Christi	9	637.7	169.3	21.7	301.1	43.4	84.8	17.4
Ft. Stockton	Whitesboro	10	382.5	57.8	45.8	217.2	7.4	44.0	10.3

Commerce	Okla. Line	11	127.5	6.0	11.4	88.6	17.3	...	4.2
Laredo	Rosenberg	12	298.8	...	1.4	1.3	111.7	180.5	3.9
N. M. Line	Amarillo	13	72.6	53.0	...	12.0	4.7	...	2.9
Gunter	Bremond	14	175.7	6.8	13.0	34.7	33.8	73.4	14.0
N. M. Line	La Line	15	456.0	185.5	...	97.6	88.4	71.0	13.5
Okla. Line	Falfurrias	16	372.6	54.3	...	59.9	207.2	41.3	9.9
Pecos	Rio Grande R.	17	149.2	134.2	...	14.2	...	...	0.8
Estelline	Jct. Hy. #15	18	200.1	93.5	7.0	74.2	...	24.4	1.0
Jct. Hy. #15	Freeport	19	285.6	41.9	20.6	54.2	...	157.2	11.7
Nr. Segovia	Hempstead	20	247.6	50.1	17.5	128.1	7.9	38.4	5.6
Lincoln	Sabine R.	21	235.1	47.2	81.1	18.5	...	84.3	4.0
Hamilton	Timpson	22	248.5	130.1	47.0	47.2	...	20.5	3.7
Okla. Line	Brady	23	250.2	52.6	6.7	153.3	13.5	19.8	4.3
N. M. State Line.	Red River	24	529.6	128.9	26.4	205.5	63.9	90.7	14.2
Okla. State Line.	Windthorst	25	38.5	11.1	...	21.6	...	4.1	1.7
Longview	Nr. Nacogdoches	26	65.2	11.5	...	52.1	...	...	1.6
N. M. State Line.	Pt. O'Connor	27	570.3	145.4	37.7	267.0	77.6	36.7	5.9
Mule Shoe	Okla. Line	28	223.3	73.7	...	58.4	...	86.4	4.8
Nr. Rock Sprgs.	Goliad	29	311.1	191.3	...	109.5	5.2	1.1	4.0
Okla. Line	Del Rio	30	333.6	43.2	18.5	86.1	20.1	156.3	9.4
Waco	Gladewater	31	160.3	15.8	...	54.0	2.1	83.8	4.6
Richland	Huntsville	32	107.0	...	...	...	...	106.5	0.5
El Paso	Okla. Line	33	232.9	61.5	...	38.5	18.5	104.1	10.3

From	To	Hwy. No.	Total Miles All Types	Type of Highway Surface—Miles					
				Earth Surf.	Gravel, Etc.	Bitul. Top	Asph. Top	Concrete	Thru Cities
Jct. Hy. #66	Honey Grove	34	223.3	21.8	17.2	114.3	12.4	45.8	11.8
La. Line	Gregory	35	408.2	16.8	43.5	134.6	0.4	198.4	14.5
Commanche	Freeport	36	263.2	80.2	32.7	44.1	...	100.8	5.4
Clarksville	Jacksonville	37	130.5	33.2	...	88.2	.2	5.3	3.6
Sugarland	Jct. Hwy. #6	38	47.9	27.5	...	...	...	20.4	...
Okla. Line	Nr. Beaumont	40	339.1	50.3	...	207.7	6.6	64.5	10.0
Carter Valley	Mt. Home	41	107.8	30.4	38.3	39.1	...	...	...
Whitewright	Jct. Hy. #15	42	88.5	...	29.0	36.0	19.1	1.8	2.6
Round Rock	Karnack	43	263.7	17.4	0.2	160.4	...	77.5	8.2
Waco	La Grange	44	125.1	43.3	11.6	54.2	2.4	10.8	2.8
Roans Prairie	Newton - Jasper Co. L.	45	117.5	65.1	5.8	23.3	...	23.3	...
Jct. Hy. #66	New Braunfels	46	24.1	10.4	5.0	7.2	...	...	1.5
Ark. Line	Jct. Hy. #49	47	67.0	16.9	...	26.0	...	21.6	2.5
Progresso	Pt. Brownsville	48	36.2	...	...	...	2.3	31.7	2.2
Paris to La. Line		49	120.9	23.6	23.4	63.7	0.6	8.1	1.5
Henrietta to Bowie		50	28.6	...	...	6.1	...	21.9	0.6
Meadows	McCamey	51	167.4	10.7	...	156.7	...	...	...
Okla. S/L.	Wellington	52	14.0	14.0	...	...	...	...	...
Lampasas	Jct. Hy. #44	53	76.7	54.6	...	...	...	21.0	1.1
Jct. Hy. 130	Van Horn	54	55.0	55.0	...	...	...	...	...

Rock Springs	Uvalde	55	70.6	20.3	7.4	9.1	33.8	...	...	
N. M. S/L.	Okla. S/L.	56	92.8	91.2	...	...	...	...	1.6	
Nacona	Bowie	59	19.5	9.1	10.4	...	...	...	...	
Wallis	Matagorda	60	63.7	13.7	7.4	9.7	...	31.2	1.7	
Devers	Anahuac	61	21.5	4.7	9.1	7.7	...	...	...	
Buma	Jct. Hy. #3	62	24.9	...	7.8	17.1	...	...	...	
Zavala	Sabine R.	63	67.2	...	37.4	29.8	...	...	...	
Wills Point	La. S/L.	64	137.3	...	1.0	91.1	...	41.7	3.5	
Mt. Pleasant	Gladewater	65	45.5	...	...	37.9	6.1	...	1.5	
Wichita Falls	Rio Grande R.	66	531.6	63.4	93.4	94.5	200.7	66.5	13.1	
Graham	Waco	67	198.3	51.5	14.2	91.5	30.4	7.9	2.8	
Stephenville	Dallas	68	106.1	...	24.9	64.3	12.4	...	4.5	
Cameron	Hearne	69	28.6	...	27.1	...	...	...	6.5	
Jayton	Jct. Hy. #30	70	135.8	47.2	8.2	79.2	...	...	1.2	
Austin	Jct. Hy. #35	71	151.8	15.3	1.5	85.2	...	47.0	2.8	
Jct. Hy. #20	Jct. Hy. #16	72	126.0	2.4	...	43.8	48.0	31.8	...	
Sealy	Eureka	73	45.1	22.1	...	10.7	4.7	7.6	...	
Rochelle	Burnet Co./L.	74	99.7	60.6	26.3	10.0	...	...	2.8	
Goldthwaite	Lometa	74A	21.2	14.3	6.6	...	...	...	0.3	
Tex. Okla. S/L.	Amarillo	75	102.2	13.7	2.8	17.0	...	68.7	...	
Eagle Pass	La Pryor	76	46.1	29.9	...	16.2	...	...	...	
Naples	La. S/L.	77	42.0	11.7	...	30.3	...	...	...	
Okla. Line	Garland	78	85.0	25.3	...	59.0	...	...	0.7	

From	To	Hwy. No.	Total Miles All Types	Type of Highway Surface—Miles: Earth Surf.	Gravel, Etc.	Bitu. Top	Asph. Top	Concrete	Thru Cities
Wichita Falls	Throckmorton	79	69.5	...	...	28.0	...	39.8	1.7
Wimberly	Nixon	80	67.7	28.0	14.0	23.5	...	...	2.2
De. Leon	San Antonio	81	258.5	136.7	78.4	22.7	13.8	...	6.9
New Mex. Line	Sanderson	82	147.1	90.3	...	56.6	0.2	...	...
New Mex. Line	Jct. Hy. #70	84	147.0	120.4	...	24.1	...	...	2.5
Del Rio	Dilley	85	143.8	14.5	19.0	...	109.3	...	1.0
Bovina	Turkey	86	103.7	99.4	...	3.5	...	...	0.8
Milam	High Island	87	181.9	83.4	59.8	28.6	...	5.6	4.5
Tex. Okla. S/L	Clarendon	88	75.1	64.2	...	10.9	...	...	...
Weatherford	Jct. Hwy. #1	89	45.5	45.5	...	...	...	...	...
Madisonville	Brenham	90	68.4	7.4	...	38.2	...	21.2	1.6
Red River	Denison	91	13.1	...	...	...	...	12.1	1.0
Hamlin	Stamford	92	17.8	...	...	17.8	...	...	...
Trinity	Lufkin	94	53.1	0.2	1.6	50.4	...	...	0.9
Temple	Hochheim	95	93.8	...	...	56.1	7.9	26.9	2.9
Corpus Christi	Harlingen	96	45.1	...	...	...	...	42.5	2.6
Jct. Hwy. #27	Nr. Fullerton	97	54.1	26.6	...	22.9	4.6	...	...
Boston	Simms	98	9.5	...	...	9.5	...	...	...
Barreda	Pt. Isabel	100	24.6	...	...	...	...	24.1	0.5
Snyder	Colorado	101	24.9	24.9	...	...	...	...	...
Taylor	Lexington	102	28.5	14.2	...	13.6	...	...	0.7

Crockett	Ratcliff	103	19.5	19.5	...	...	...	...	...	
E. Liberty Hill	Circleville	104	27.1	12.2	...	14.1	...	...	0.8	
Navasota	Cleveland	105	66.5	54.9	11.6	...	...	...	...	
Crockett	Woodville	106	74.1	...	...	73.8	...	...	0.3	
Strawn	Stephenville	108	32.8	27.1	5.1	...	...	...	0.6	
Tyler	Rusk	110	44.3	...	...	44.3	...	...	...	
Edna	Midfield	111	26.3	26.3	...	...	...	...	...	
Gonzales	Karnes City	112	51.9	...	...	4.2	25.2	...	...	
Victoria Co./L.	Austwell	113	15.1	10.7	4.4	...	...	...	...	
Bridgeport	Dallas	114	73.2	22.0	...	2.2	...	49.0	...	
Kermit	Pyote	115	26.9	...	...	8.5	18.4	...	...	
Okla. State L.	Claude	117	156.1	43.8	...	72.7	14.5	20.9	4.2	
Ft. Davis	Alpine	118	24.0	15.2	...	7.8	...	...	1.0	
Yorktown	Goliad	119	15.3	...	...	15.3	...	...	...	
Old Glory	New Castle	120	86.7	66.9	...	18.5	...	...	1.3	
Birdville	Jct. Hwy. #40	121	19.5	...	1.3	...	0.3	17.9	...	
Parsons Switch	Cleburne	122	26.9	9.0	17.9	...	...	...	...	
San Marcos	Stockdale	123	45.3	...	...	20.7	...	22.3	2.2	
Stowell	Galveston	124	48.4	3.5	10.0	33.4	...	...	1.5	
Jct. Hwy. #61	Beaumont	125	44.9	...	30.6	8.4	...	5.0	0.9	
Con Can	Sabinal	127	21.0	...	...	...	21.0	...	...	
Victoria	Alice	128	109.6	...	...	...	49.4	60.2	...	
El Paso	N. M. S/L.	130	128.7	29.8	...	96.6	...	1.0	1.3	

From	To	Hwy. No.	Total Miles All Types	Surface—Miles: Earth Surf.	Type of Gravel, Etc.	Highway Bitu. Top	Asph. Top	Concrete	Thru Cities
Brackettville	Spofford	131	9.2	...	...	...	9.2	...	...
S. J. Bat. Grnd.	LaPorte Rd.	134	8.8	...	4.4	...	...	4.4	...
Jct. Hwy. #31	Troup	135	33.5	...	...	33.5	...	...	...
Carson Co./L.	Amarillo	136	30.4	5.8	...	24.6	...	...	...
Lubbock	Meadows	137	24.9	...	...	24.9	...	...	...
Tex. Okla. S/L.	Jct. Hwy. #4	138	11.1	11.1	...	...	...	...	...
Chilton	Marlin	139	11.4	...	10.8	...	...	...	...
Jct. Hwy. #66	Kingsville	141	14.5	...	...	...	...	13.9	0.6
Glen Rose	Meridian	144	23.4	6.3	6.1	11.0	...	...	...
E. McKinney	Princeton	145	1.2	...	...	1.2	...	...	...
Polk-Liberty Co. L.	Tex. City Jct.	146	112.7	67.1	6.8	30.1	...	8.7	...
San Augustine	Zavalla	147	36.5	30.2	6.3	...	...	...	...
Red River Br.	Henrietta	148	28.5	10.4	17.5	...	...	...	0.6
Longview	Carthage	149	41.7	10.7	11.7	19.3	...	...	...
New Waverly	Shepherd	150	34.0	...	7.7	26.0	...	0.3	...
Menard	Mason	151	39.6	39.6	...	...	...	...	...
Pompa	Wheeler	152	35.1	11.8	...	16.9	6.4	...	...
Cooper	Quitman	154	45.8	33.3	...	11.6	...	...	0.9
Gilmer	Marshall	155	39.2	28.6	...	9.6	—	...	1.0
Point Blank	Cold Springs	156	13.5	...	...	13.5	...	...	...

Jct. Hwy. #23	Breckenridge	157	31.2	...	...	...	30.5	...	0.7	
Robert Lee	S. of Abilene	158	50.5	39.8	...	...	10.7	...	...	
Oldenburg	Hempstead	159	50.6	...	...	35.2	...	15.4	...	
Denison	Jct. Hwy. #78	160	29.3	12.5	...	1.8	...	14.7	0.3	
Fannin	Fannin Park	162	0.7	0.7	...	...	...	...	...	
Barnhart	Ozona	163	29.5	...	...	29.5	...	...	...	
Mart	Limestone C/L.	164	11.0	...	...	2.1	...	7.7	1.2	
Austin Cemetery	Driveways	165	0.9	...	...	0.9	...	...	...	
Ft. Davis	McDonald Observ.	166	17.3	17.3	...	...	...	...	...	
Tomb Miers Expd.	La Grange	167	1.0	...	...	1.0	...	...	...	
S. of Canadian	Jct. Hy. #4 & 33	170	2.7	...	...	2.7	...	...	...	
Hillsboro	Hubbard	171	27.8	...	26.7	...	...	...	1.1	
Ganado	Olivia	172	28.2	28.2	...	...	...	...	...	
Walnut Spgs.	Cleburne	174	43.6	9.7	17.5	16.1	...	...	0.3	
Tyler	Kilgore	176	25.3	...	...	25.3	...	...	...	
Blessing	Wye	177	0.8	...	...	...	...	0.8	...	
Hartley	Moore Co./L.	178	13.3	...	...	13.3	...	...	...	
Teague	Dew	179	8.4	8.4	...	...	...	...	...	
Jct. Hwy. #5	Annona	180	3.1	...	...	3.1	...	...	...	
Gary	Jct. Hwy. #8	181	5.1	...	...	5.1	...	...	...	
Alba	Quitman	182	10.6	10.6	...	...	...	...	...	

From Surf. Etc.	To Top Top	Hwy. No. Concrete	Miles All Types Cities	Earth Surf.	Type of Gravel, Etc.	Highway Bitu. Top	Surface—Miles Asph. Top	Concrete	Thru Cities
Dallas	Mesquite	183	11.2	...	...	2.2	8.3	0.7	...
Bronson	Hemphill	184	11.1	...	...	11.1	...	...	...
Green Lake	Seadrift	185	7.5	...	7.5	...	...	...	...
Willacy-Hidalgo Co./L.	N. of Raymondville	186	5.8	5.8	...	...	...	...	...
Cisco	Jct. Hwy. #67	187	8.7	...	...	8.7	...	...	...
Bastrop Co./L.	Jct. Hwy. #71	O. S. R.	91.7	38.0	...	53.7	...	...	...
Brookston	Roxton	188	5.5	...	...	5.5	...	...	...
Albany	Coleman	191	16.4	16.4	...	...	...	...	...
Mingus	Gordon	193	6.5	...	6.5	...	...	...	...
Dimmitt	Plainview	194	29.0	22.3	...	4.4	...	...	2.3
Jct. Hwy. #74	Georgetown	195	23.1	8.6	...	14.5	...	...	...
Kent	Ft. Stockton	196	76.3	...	...	76.3	...	...	...
Canton	Mabank	198	20.6	2.4	...	18.2	...	...	...
Olney	Jacksboro	199	31.7	31.7	...	...	...	...	...
Geo. West	Beeville	202	23.6	23.0	...	...	...	...	0.6
Hedley	Wellington	203	35.7	34.2	...	...	...	...	1.5
Angelina R.	Jct. Hwy. #26	204	17.1	17.1	...	...	...	...	...
Rising Star	Coleman	206	42.8	...	...	42.3	...	...	0.5
Crosby C/L.	Ralls	207	10.9	10.9	...	...	...	...	...

Independence	Jct. Hy. #90	211	8.8	...	...	8.8	...	...	...
Canyon	State Park	217	12.4	...	...	12.1	...	...	0.3
Jct. Hwy. #95	Heidenheimer	221	5.9	...	5.9	...	...	...	...
Knox City	Munday	222	13.6	13.5	...	...	...	...	0.1
Jct. Hwy. #6— Houston	15.7 Mi. East	225	17.1	...	...	...	...	16.7	0.4
Totals			21,045.9	5,426.2	1,361.9	7,128.2	2,127.6	4,437.0	565.0
Percent of Total			100.0	25.8	6.6	33.8	10.1	21.0	2.7

Type.	Miles	Percent
Rigid Type Pavement (Concrete)	4,437.0	21.0
Non-Rigid Type Pavement (other than concrete)	16,043.9	76.3
Thru Cities	565.0	2.7
Totals	21,045.9	100.0

EXHIBIT No. 1A.

Docket No. 864. Witness: Knapp.

Description of Highway Types in Routes Proposed in Application of A. E. McDonald.

From	To	Via Hwy. No.	Total Dist. Miles	Type of Highway Surface—Miles: Earth Surf.	Gravel, Etc.	Bitu. Top	Asph. Top	Concrete	Thru Cities
State Line (Denison)—Galveston Via Hys. 6-2-6.									
State Line	Hillsboro	6	142.9	5.3	...	30.8	19.7	69.4	17.7
Hillsboro	Waco	2	32.9	...	...	10.5	...	21.5	0.9
Waco	Galveston	6	238.2	6.4	...	55.1	6.5	149.6	20.6
Totals			414.0	11.7	...	96.4	26.2	240.5	39.2
Percent of Total			100%	3%	...	23%	6%	58%	10%
State Line (Gainesville)—Houston Via Hys. 40-10-34-14-32-19.									
State Line	Denton	40	38.4	...	...	28.8	...	6.7	2.9
Denton	Ft. Worth	10	34.4	...	...	21.0	...	11.5	1.9
Ft. Worth	Ennis	34	55.4	4.8	...	22.4	...	22.8	5.4
Ennis	Richland	14	32.6	...	...	...	...	30.8	1.8
Richland	Huntsville	32	106.9	...	...	...	...	106.5	0.4

Huntsville	Houston	19	68.9	...	...	14.3	...	50.3	4.3
Totals			336.6	4.8	...	86.5	...	228.6	16.7
Percent of Total			100%	1%	...	26%	...	68%	5%
		Waco-McAllen Via Hys. 2.6.							
Waco	San Antonio	2	182.8	2.8	12.8	53.2	9.8	88.2	16.0
San. Antonio	Pharr	66	233.5	10.1	14.4	30.9	127.5	47.3	3.3
Pharr	McAllen	4	3.3	...	...	...	...	2.9	0.4
Totals			419.6	12.9	27.2	84.1	137.3	138.4	19.7
Percent of Total			100%	3%	6%	20%	33%	33%	5%
Totals—All Routes			1,170.2	29.4	27.2	267.0	163.5	607.5	75.6
Percent of Total———All Routes			100%	3%	2%	23%	14%	52%	6%

Type.	Miles	Percent
Rigid Type Pavement (Concrete)	607.5	52
Non-Rigid Type Pavement (Other than Concrete)	487.1	42
Thru Cities	75.6	6
Totals	1,170.2	100

EXHIBIT No. 2.

Docket No. 864. Witness: Knapp.

Schedule Showing Width of Non-Rigid Highway Pavements in the State Designated Highway System of Texas.

As Verified by Personal Inspection of Geo. A. Knapp on the Ground.

From	To	Via Hy. No,	Tot. Mis. All Types	Width of Non-Rigid Pavements 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
N. M. Line	Texarkana	1	859.9	115.7	13	212.4	..	...	...
Abilene	Jct. #15	1A	25.2	...	..	...	..	...	..
Jct. #1	Dallas	1B	4.8	...	...	...	..	...	..
Ringgold	Laredo	2	511.3	91.1	18	107.6	21	198.7	39
Burleson	Itasca	2A	37.8	10.6	28	24.8	66	35.4	94
Van Horn	Sabine R.	3	790.6	66.3	09	278.1	35	344.4	44
Seguin	Waelder	3A	46.9	...	..	...	..	...	..
Okla. Line	Boca Chica	4	835.6	40.4	05	120.4	14	160.8	19
N. M. Line	Texarkana	5	636.2	2.9	01	65.4	10	68.3	11
Red R. Br.	Galveston	6	379.8	42.8	11	10.4	.03	53.2	14
N. M. Line	Joaquin	7	549.9	35.8	07	77.1	14	112.9	21
Ark. S/L.	Pt. Arthur	8	302.5	60.2	20	71.7	24	131.9	44
Stratford	Corpus Christi	9	637.7	11.6	.02	110.2	17	121.8	19

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Ft. Stockton ...	Whitesbore ...	10	382.5	55.0	14	113.0	30	168.0	44
Commerce	Okla. Line	11	127.5	3.0	02	90.0	71	93.0	73
Laredo	Rosenberg	12	298.8	13.2	04	87.7	29	100.9	..
N. M. Line	Amarillo	13	72.6	...	..	16.7	23	16.7	23
Gunter	Bremond	14	175.7	8.1	05	72.0	41	80.1	46
N. M. Line	La. Line	15	456.0	35.4	08	100.1	22	135.5	30
Okla. Line	Falfurrias	16	372.6	70.4	19	170.0	46	240.4	65
Pecos	Rio Grande R..	17	149.2	3.8	03	...	..	3.8	03
Estelline	Jct. Hy. #15...	18	200.1	3.1	02	40.8	20	43.9	22
Jct. Hy. #15	Freeport	19	285.6	27.2	10	34.6	12	61.8	22
Nr. Segovia	Hempstead	20	247.6	57.6	23	48.9	20	106.5	43
Lincoln	Sabine R.	21	235.1	42.4	18	12.0	05	54.4	23
Hamilton	Timpson	22	248.5	25.1	10	21.9	09	47.0	19
Okla. Line	Brady	23	250.2	19.1	08	87.3	35	106.4	43
N. M. State Line.	Red River	24	529.6	86.1	16	138.1	26	224.2	42
Okla. State L....	Windthorst ...	25	38.5	15.0	39	6.5	17	21.5	56
Longview	Nr. Nacogdoches	26	65.2	12.8	20	31.2	48	44.0	68
N. M. State L...	Pt. O'Connor ..	27	570.3	129.7	23	104.0	18	233.7	41
Mule Shoe	Okla. Line	28	223.3	...	..	26.6	12	26.6	12
Nr. Rock Sprgs..	Goliad	29	311.1	17.1	05	37.2	12	54.3	17
Okla. Line	Del Rio	30	333.6	28.8	09	77.3	23	106.1	32
Waco	Gladewater ...	31	160.3	27.7	17	22.1	14	49.8	31
Richland	Huntsville	32	107.0	...	..	...	..	...	..

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Non-Rigid Pavements: 16 Ft. & Less Miles	16 Ft. & Less % of Tot.	16 to 18 Feet Miles	16 to 18 Feet % of Tot.	18 Ft & Less Miles	18 Ft & Less % of Tot.
El Paso	Okla. Line	33	232.9	...	..	15.3	07	15.3	07
Jct. Hy. #66	Honey Grove	34	223.3	25.2	11	45.8	21	71.0	34
La. Line	Gregory	35	408.2	104.9	26	34.2	08	139.1	34
Commanche	Freeport	36	263.2	24.5	09	26.4	10	50.9	19
Clarksville	Jacksonville	37	130.5	...	..	49.0	38	49.0	38
Sugarland	Jct. Hwy. #6	38	47.9	...	..	...	..	...	..
Okla. Line	Nr. Beaumont	40	339.1	71.5	.21	98.3	29	169.8	50
Carter Valley	Mt. Home	41	107.8	9.8	.09	39.1	36	48.9	45
Whitewright	Jct. Hy. #15	42	88.5	56.6	.64	19.0	21	75.6	85
Round Rock	Karnack	43	263.7	16.5	.06	49.3	19	65.8	25
Waco	La Grange	44	125.1	33.9	.27	8.3	07	42.2	34
Roans Prairie	Newton - Jasper Co. L.	45	117.5	5.8	.05	16.2	14	22.0	19
Jct. Hy. #66	New Braunfels	46	24.1	12.2	.51	...	..	12.2	51
Ark. S/L.	Jct. Hy. #49	47	67.0	...	..	17.1	26	17.1	26
Progresso	Pt. Brownsville	48	36.2	...	..	2.3	06	2.3	06
Paris	La. S/L	49	120.9	45.0	37	32.5	27	77.5	64
Henrietta	Bowie	50	28.6	...	..	6.1	21	6.1	21
Meadows	McCamey	51	167.4	...	..	128.2	77	128.2	77
Okla. S/L.	Wellington	52	14.0	...	..	...	..	...	..
Lampasas	Jct. Hy. #44	53	76.7	...	..	...	..	...	..

Jct. Hy. #130	Van Horn	54	55.0	...	..	...	..	...	..	
Rock Springs	Uvalde	55	70.6	41.2	58	9.1	13	50.3	71	
N. M. S/L.	Okla. S/L.	56	92.8	...	..	...	..	...	..	
Nacona	Bowie	59	19.5	...	..	10.4	53	10.4	53	
Wallis	Matagorda	60	63.7	...	..	17.1	27	17.1	27	
Devers	Anahuac	61	21.5	9.1	42	5.2	24	14.3	66	
Buma	Jct. Hy. #3	62	24.9	24.9	100	...	..	24.9	100	
Zavala	Sabine R.	63	67.2	37.6	56	...	..	37.6	56	
Wills Point	La. S/L.	64	137.3	...	..	36.3	26	36.3	26	
Mt. Pleasant	Gladewater	65	45.5	7.0	15	22.2	49	29.2	64	
Wichita Falls	Rio Grande R.	66	531.6	73.1	14	85.6	16	158.7	30	
Graham	Waco	67	198.3	70.3	35	49.7	25	120.0	60	
Stephenville	Dallas	68	106.1	41.0	39	32.4	30	73.4	69	
Cameron	Hearne	69	28.6	...	..	...	..	...	..	
Jayton	Jct. Hy. #30	70	135.8	...	..	56.5	42	56.5	42	
Austin	Jct. Hy. #35	71	151.8	7.0	05	39.6	26	46.6	31	
Jct. Hy. #20	Jct. Hy. #16	72	126.0	14.2	11	75.4	60	89.6	71	
Sealy	Eureka	73	45.1	...	..	15.5	34	15.5	34	
Rochelle	Burnet Co./L.	74	99.7	...	..	26.3	26	26.3	26	
Goldthwaite	Lometa	74A	21.2	...	..	...	..	...	..	
Tex. Okla. S/L.	Amarillo	75	102.2	...	..	17.0	17	17.0	17	
Eagle Pass	La Pryor	76	46.1	...	...	...	..	...	..	
Naples	La. S/L.	77	42.0	...	..	30.3	72	30.3	72	

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Non-Rigid Pavements: 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
Okla. Line	Garland	78	85.0	44.3	52	14.7	17	59.0	69
Wichita Falls	Throckmorton	79	69.5	28.0	40	...	..	28.0	40
Wimberly	Nixon	80	67.7	14.0	21	3.0	04	17.0	25
De Leon	San Antonio	81	258.5	44.3	17	19.8	08	64.1	25
N. M. S/L.	Sanderson	82	147.1	18.1	12	5.2	04	23.3	16
N. M. S/L.	Jct. Hy. #70	84	147.0	...	..	24.1	16	24.1	16
Del Rio	Dilley	85	143.8	79.8	55	45.4	32	125.2	87
Bovina	Turkey	86	103.7	...	..	3.5	03	3.5	03
Milam	High Island	87	181.9	...	..	15.1	08	15.1	08
Tex.-Okla. S/L.	Clarendon	88	75.1	...	..	...	..	...	..
Weatherford	Jct. Hwy. #1	89	45.3	...	..	...	..	...	..
Madisonville	Brenham	90	68.4	...	..	34.9	51	34.9	51
Red River	Denison	91	13.1	...	..	...	..	...	..
Hamlin	Stamford	92	17.8	...	..	...	..	...	..
Trinity	Lufkin	94	53.1	...	..	29.8	56	29.8	56
Temple	Hochheim	95	93.8	47.4	51	8.9	09	56.3	60
Corpus Christi	Harlingen	96	45.1	...	..	...	..	...	..
Jct. Hwy. #27	Nr. Fullerton	97	54.1	...	..	27.5	51	27.5	51
Baston	Simms	98	9.5	...	..	9.5	100	9.5	100
Barreda	Pt. Isabel	100	24.6	...	..	...	..	...	..
Snyder	Colorado	101	24.9	...	..	...	..	...	..

Taylor	Lexington	102	28.5	7.3	26	6.3	22	13.6	48		
Crockett	Ratcliff	103	19.5	...	..	...	..	...	..		
E. Liberty Hill	Circleville	104	27.1	...	..	14.1	52	14.1	52		
Navasota	Cleveland	105	66.5	...	...	3.6	05	3.6	05		
Crockett	Woodville	106	74.1	...	..	17.7	24	17.7	24		
Strawn	Stephenville	108	32.8	...	...	...	..	...	..		
Tyler	Rusk	110	44.3	44.3	100	...	..	44.3	100		
Edna	Midfield	111	26.3	...	..	...	..	...	..		
Gonzales	Karnes City	112	51.9	...	..	9.7	19	9.7	19		
Victoria Co./L.	Austwell	113	15.1	...	..	4.4	29	4.4	29		
Bridgeport	Dallas	114	73.2	...	..	...	..	...	..		
Kermit	Pyote	115	26.9	...	..	26.9	100	26.9	100		
Okla. S/L.	Claude	117	156.1	...	..	33.4	21	33.4	21		
Ft. Davis	Alpine	118	24.0	...	..	7.8	33	7.8	33		
Yorktown	Goliad	119	15.3	...	..	...	..	...	..		
Old Glory	New Castle	120	86.7	...	..	8.9	10	8.9	10		
Birdville	Jct. Hwy. #40	121	19.5	...	..	...	..	...	..		
Parsons Sw.	Cleburne	122	26.9	17.9	67	...	..	17.9	67		
San Marcos	Stockdale	123	45.3	...	..	...	..	...	..		
Stowell	Galveston	124	48.4	...	..	43.4	90	43.4	90		
Jct. Hwy. #61	Beaumont	125	44.9	...	..	39.0	87	39.0	87		
Con Can	Sabinal	127	21.0	21.0	100	...	..	21.0	100		
Victoria	Alice	128	109.6	11.8	11	37.6	34	49.4	45		

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Non-Rigid Pavements: 16 Ft. & Less Miles	16 Ft. & Less % of Tot.	16 to 18 Feet Miles	16 to 18 Feet % of Tot.	18 Ft & Less Miles	18 Ft & Less % of Tot.
El Paso	N. M. S/L.	130	128.7	...	..	96.6	75	96.6	75
Brackettville	Spofford	131	9.2	...	..	9.2	100	9.2	100
S. J. Bat. Grnd.	LaPorte Rd.	134	8.8	4.4	50	...	..	4.4	50
Jct. Hwy. #31	Troup	135	33.5	...	..	7.8	23	7.8	23
Carson Co./L.	Amarillo	136	30.4	...	..	24.6	81	24.6	81
Lubbock	Meadows	137	24.9	...	..	12.8	51	12.8	51
Tex. Okla. S/L.	Jct. Hwy. #4	138	11.1	...	..	...	..	...	..
Chilton	Marlin	139	11.4	...	..	...	..	...	..
Jct. Hwy. #66	Kingsville	141	14.5	...	..	...	..	...	..
Martindale	Lockhart	142	11.0	...	..	...	..	...	..
Glen Rose	Meridian	144	23.4	11.0	47	...	..	11.0	47
E. McKinney	Princeton	145	1.2	1.2	100	...	..	1.2	100
Polk-Liberty Co. L.	Tex. City Jct.	146	112.7	14.6	13	22.4	20	37.0	33
San Augustine	Zavalla	147	36.5	6.3	17	...	..	6.3	17
Red River Br.	Henrietta	148	28.5	13.6	48	3.9	13	17.5	61
Longview	Carthage	149	41.7	...	..	8.6	21	8.6	21
New Waverly	Shepherd	150	34.0	...	..	...	..	...	..
Menard	Mason	151	39.6	...	..	...	..	...	..
Pampa	Wheeler	152	35.1	...	..	...	..	...	..
Cooper	Quitman	154	45.8	...	..	11.6	25	11.6	25

Gilmer	Marshall	155	39.2	...	..	...	..	...	..	
Point Blank	Cold Springs	156	13.5	...	..	...	..	...	..	
Jct. Hwy. #23	Breckenridge	157	31.2	...	..	30.5	98	30.5	98	
Robert Lee	S. of Abilene	158	50.5	...	..	10.7	21	10.7	21	
Oldenburg	Hempstead	159	50.6	...	..	15.7	31	15.7	31	
Denison	Jct. Hwy. #78	160	29.3	1.8	06	...	..	1.8	06	
Fannin	Fannin Park	162	0.7	...	..	...	..	...	..	
Barnhart	Ozona	163	29.5	...	..	29.5	100	29.5	100	
Mart	Limestone C/L	164	11.0	...	..	2.1	19	2.1	19	
Austin Cemetery	Driveways	165	0.9	0.9	100	...	...	0.9	100	
Ft. Davis	McDonald Observ.	166	17.3	...	..	...	..	...	..	
Tomb Miers Expd.	La Grange	167	1.0	1.0	100	...	..	1.0	100	
S. of Canidan	Jct. Hy. #4 & 33	170	2.7	...	..	...	..	...	..	
Hillsboro	Hubbard	171	27.8	17.9	64	8.8	32	26.7	96	
Ganado	Olivia	172	28.2	...	..	...	..	...	..	
Walnut Spgs.	Cleburne	174	43.6	33.6	77	...	..	33.6	77	
Tyler	Kilgore	176	25.3	...	..	...	..	...	..	
Blessing	Wye	177	0.8	...	..	...	..	...	..	
Hartley	Moore Co./L.	178	13.3	...	..	...	..	...	..	
Teague	Dew	179	8.4	...	..	...	..	...	..	
Jct. Hwy. #5	Annona	180	3.1	3.1	100	...	..	3.1	100	

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Non-Rigid Pavements: 16 Ft. & Less Miles	16 Ft. & Less % of Tot.	16 to 18 Feet Miles	16 to 18 Feet % of Tot.	18 Ft & Less Miles	18 Ft & Less % of Tot.
Gary	Jct. Hwy. #8	181	5.1	...	...	5.1	100	5.1	100
Alba	Quitman	182	10.6	...	..	...	..	...	..
Dallas	Mesquite	183	11.2	...	..	...	..	...	..
Bronson	Hemphill	184	11.1	...	..	...	..	...	..
Green Lake	Seadrift	185	7.5	7.5	100	...	..	7.5	100
Willacy-Hidalgo Co./L.	N. of Raymondville	186	5.8	...	...	...	...	...	...
Cisco	Jct. Hwy. #67	187	8.7	...	..	8.7	100	8.7	100
Bastrop Co./L.	Jct. Hwy. #71	O. S. R.	91.7	...	..	...	..	...	..
Brookston	Roxton	188	5.5	...	..	...	..	...	..
Albany	Coleman	191	16.4	...	..	...	..	...	..
Mingus	Gordon	193	6.5	6.3	97	...	..	6.3	97
Dimmitt	Plainview	194	29.0	...	..	...	..	...	..
Jct. Hwy. #74	Georgetown	195	23.1	...	..	...	..	...	..
Kent	Ft. Stockton	196	76.3	33.6	44	31.0	41	64.6	85
Canton	Mabank	198	20.6	...	..	...	..	...	..
Olney	Jacksboro	199	31.7	...	..	...	..	...	..
Geo. West	Beeville	202	23.6	...	..	...	..	...	..
Hedley	Wellington	203	35.7	...	..	...	..	...	..
Angelina R.	Jct. Hy. #26	204	17.1	...	..	...	..	...	..

Rising Star	Coleman	206	42.8			42.3	99	42.3	99
Crosby C/L.	Ralls	207	10.9	...	..	...	...	...	..
Independence	Jct. Hy. #90	211	8.8	...	..	8.8	100	8.8	100
Canyon	State Park	217	12.4	...	..	...	..	...	..
Jct. Hwy. #95	Heidenheimer	221	5.9	5.9	100	...	..	5.9	100
Knox City	Munday	222	13.6	...	..	...	..	...	..
Jct. Hwy. #6— Houston	15.7 Mi. East	225	17.1	...	..	...	..	...	..
Totals			21,045.9	2,430.2	12	4,416.7	21	6,846.9	33
Total Non-Rigid except Earth and Cities			10,617.7	2,430.2	23	4,416.7	41	6,846.9	64
Total Concrete			4,437.0	175.7	4	2,799.9	63	2,975.6	67
Total All Types except Earth and Cities			15,054.7	2,605.9	17	7,216.6	48	9,822.5	65

EXHIBIT No. 2A.

Docket No. 864. Witness: Knapp.

Schedule Showing Width of Non-Rigid Highway Pavements in Routes Specified in Application of A. E. McDonald.

From	To	Via Hy. No.	Tot. Mls. All Types	Width of Non-Rigid Pavements: 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
State Line (Denison)—Galveston Via Hys. 6-2-6.									
State Line	Hillsboro	6	142.9	...	...	42.5	30	42.5	30
Hillsboro	Waco	2	32.9	...	...	0.6	2	0.6	2
Waco	Galveston	6	238.2	...	..	74.2	31	74.2	31
Totals			414.0	...	...	117.3	28	117.3	28
State Line (Gainesville)—Houston Via Hys. 40-10-34-14-32-19.									
State Line	Denton	40	38.4	14.7	38	14.1	37	28.8	75
Denton	Ft. Worth	10	34.4	17.4	51	3.6	10	21.0	61
Ft. Worth	Ennis	34	55.4	...	..	22.4	..	22.4	..
Ennis	Richland	14	32.6	...	..	...	..	...	..

Richland	Huntsville	32	106.9	...	..	...	..	...	..
Huntsville	Houston	19	68.9	...	..	14.3	21	14.3	21
Totals			336.6	32.1	10	54.4	16	86.5	26

Waco-McAllen Via Hys. 2-66-4.

Waco	San Antonio	2	182.8	0.5	..	21.1	12	21.6	12
San Antonio	Pharr	66	233.5	33.9	15	84.6	36	118.5	51
Pharr	McAllen	4	3.3	...	..	...	..	...	..
Totals			419.6	34.4	8	105.7	25	140.2	33
Totals—All Routes			1,170.2	66.5	5	277.4	24	343.9	29

Note: Non-rigid surfaces, except earth, constitute 39% of total route mileages; therefore 75% of non-rigid pavements are 18' or less in width.

EXHIBIT No. 3.

Docket No. 864. Witness: Knapp.

Concrete.

Schedule Showing Width of Rigid Highway Pavements in the State Designated Highway System of Texas.

As Verified by Personal Inspection of Geo. A Knapp on the Ground.

From	To	Via Hy. No.	Tot. Mls. All Types	Width of Rigid Pavements: 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
N. M. Line	Texarkana	1	859.9	1.3	..	195.8	23	197.1	23
Abilene	Jct. #15	1A	25.2	...	..	7.9	31	7.9	31
Jct. #1	Dallas	1B	4.8	...	..	....	..	....	..
Ringgold	Laredo	2	511.3	...	..	25.8	05	25.8	05
Burleson	Itasca	2A	37.8	....	..	....	..	....	..
Van Horn	Sabine R.	3	790.6	14.0	02	88.1	11	102.1	13
Seguin	Waelder	3A	46.9	....	..	....	..	....	..
Okla. Line	Boca Chica	4	835.6	12.9	02	142.0	17	154.9	19
New Mex. Line	Texarkana	5	636.2	18.0	03	236.8	37	254.8	40
Red R. Br.	Galveston	6	379.8	...	..	116.7	31	116.7	31
New Mex. Line	Joaquin	7	549.9	..	..	52.5	10	52.5	10
Ark. Line	Pt. Arthur	8	302.5	6.0	02	13.9	05	19.9	07
Stratford	Corpus Christi	9	637.7	...	..	82.3	13	82.3	13

Ft. Stockton	Whitesboro	10	382.5	1.1	..	29.9	08	31.0	08	
Commerce	Okla. Line	11	127.5	...	..	...	..	...	..	
Laredo	Rosenberg	12	298.8	...	..	175.9	59	175.9	59	
N. M. Line	Amarillo	13	72.6	...	..	...	..	...	..	
Gunter	Bremond	14	175.7	...	..	19.7	11	19.7	11	
N. M. Line	La. Line	15	456.0	...	..	38.0	08	38.0	08	
Okla. Line	Falfurrias	16	372.6	1.5	01	38.5	10	40.0	11	
Pecos	Rio Grande R.	17	149.2	...	..	...	..	...	..	
Estelline	Jct. Hy. #15	18	200.1	...	..	24.4	12	24.4	12	
Jct. Hy. #15	Freeport	19	285.6	...	..	113.8	40	113.8	40	
Nr. Segovia	Hempstead	20	247.6	22.6	09	6.8	03	29.4	12	
Lincoln	Sabine R.	21	235.1	6.9	03	21.1	09	28.0	12	
Hamilton	Timpson	22	248.5	...	..	20.5	..	20.5	..	
Okla. Line	Brady	23	250.2	3.5	02	15.9	06	19.4	08	
N. M. State L.	Red River	24	529.6	17.0	03	51.4	10	68.4	13	
Okla. State L.	Windthorst	25	38.5	4.1	11	...	..	4.1	11	
Longview	Nr. Nacogdoches	26	65.2	...	..	...	..	...	..	
N. M. State L.	Pt. O'Connor	27	570.3	...	..	36.7	06	36.7	06	
Mule Shoe	Okla. Line	28	223.3	...	..	78.9	35	78.9	35	
Nr. Rock Sprgs.	Goliad	29	311.1	...	..	156.3	47	156.3	47	
Okla. Line	Del Rio	30	333.6	6.6	04	26.9	17	33.5	21	
Waco	Gladewater	31	160.3	...	..	106.5	100	106.5	100	
Richland	Huntsville	32	107.0	...	..	...	..	...	..	
El Paso	Okla. Line	33	232.9	...	..	73.7	32	73.7	32	

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Rigid Pavements: 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
Jct. Hy. #66	Honey Grove	34	223.3	...	..	...	..	...	..
La. Line	Gregory	35	408.2	...	..	110.8	27	110.8	27
Commanche	Freeport	36	263.2	...	..	86.8	33	86.8	33
Clarksville	Jacksonville	37	130.5	5.3	04	...	..	5.3	04
Sugarland	Jct. Hwy. #6	38	47.9	...	..	...	..	...	..
Okla. Line	Nr. Beaumont	40	339.1	...	..	32.3	10	32.3	10
Carter Valley	Mt. Home	41	107.8	...	..	...	..	...	..
Whitewright	Jct. Hy. #15	42	88.5	1.3	01	0.5	01	1.8	02
Round Rock	Karnack	43	263.7	...	..	32.8	12	32.8	12
Waco	La Grange	44	125.1	...	..	...	..	...	..
Roans Prairie	Newton - Jasper Co. S/L.	45	117.5	...	..	23.3	20	23.3	20
Jct. Hy. #66	New Braunfels	46	24.1	6.0	09	15.6	23	21.6	32
Ark. S/L.	Jct. Hy. #49	47	67.0	...	..	...	..	...	..
Progresso	Pt. Brownsville	48	36.2	7.4	20	23.1	64	30.5	84
Paris	La. S/L	49	120.9	...	..	...	..	...	..
Henrietta	Bowie	50	28.6	...	..	19.5	68	19.5	68
Meadows	McCamey	51	167.4	...	..	...	..	...	..
Okla. S/L.	Wellington	52	14.0	...	..	...	..	...	..
Lampasas	Jct. Hy. #44	53	76.7	...	..	21.0	27	21.0	27
Jct. Hy. 130	Van Horn	54	55.0	...	..	...	..	...	..

Rock Springs	Uvalde	55	70.6						
N. M. S/L.	Okla. S/L.	56	92.8						
Nacona	Bowie	59	19.5						
Wallis	Matagorda	60	63.7			31.2	49	31.2	49
Devers	Anahuac	61	21.5						
Buma	Jct. Hy. #3	62	24.9						
Zavala	Sabine R.	63	67.2						
Wills Point	La. S/L.	64	137.3	24.3	18			24.3	18
Mt. Pleasant	Gladewater	65	45.5						
Wichita Falls	Rio Grande R.	66	531.6			26.4	05	26.4	05
Graham	Waco	67	198.3						
Stephenville	Dallas	68	106.1						
Cameron	Hearne	69	28.6						
Jayton	Jct. Hy. #30	70	135.8						
Austin	Jct. Hy. #35	71	151.8			47.0	31	47.0	31
Jct. Hy. #20	Jct. Hy. #16	72	126.0			17.3		17.3	14
Sealy	Eureka	73	45.1						
Rochelle	Burnet Co. L.	74	99.7						
Goldthwaite	Lometa	74A	21.2						
Tex. Okla. S/L.	Amarillo	75	102.2			68.7	67	68.7	67
Eagle Pass	La Pryor	76	46.1						
Naples	La. S/L.	77	42.0						
Okla. Line	Garland	78	85.0						

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Rigid Pavements: 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
Wichita Falls	Throckmorton	79	69.5	2.8	04	37.0	53	39.8	57
Wimberly	Nixon	80	67.7	...	..	...	..	...	..
De Leon	San Antonio	81	258.5	...	..	...	..	...	..
N. M. S/L.	Sanderson	82	147.1	...	..	...	..	...	..
N. M. S/L.	Jct. Hy. #70	84	147.0	...	..	...	..	...	..
Del Rio	Dilley	85	143.8	...	..	...	..	...	..
Bovina	Turkey	86	103.7	...	..	...	..	...	..
Milam	High Island	87	181.9	1.6	01	4.0	02	5.6	03
Tex. Okla. S/L.	Clarendon	88	75.1	...	..	...	..	...	..
Weatherford	Jct. Hwy. #1	89	45.5	...	..	...	..	...	..
Madisonville	Brenham	90	68.4	6.5	10	14.7	21	21.2	31
Red River	Denison	91	13.1	...	..	12.1	92	12.1	92
Hamlin	Stamford	92	17.8	...	...	...	..	...	..
Trinity	Lufkin	94	53.1	...	..	...	..	...	..
Temple	Hochheim	95	93.8	...	..	21.9	23	21.9	23
Corpus Christi	Harlingen	96	45.1	...	..	42.5	94	42.5	94
Jct. Hwy. #27	Fullerton	97	54.1	...	..	...	..	...	..
Boston	Simms	98	9.5	...	..	...	..	...	..
Barreda	Pt. Isabel	100	24.6	...	..	...	..	...	..
Snyder	Colorado	101	24.9	...	..	...	..	...	..
Taylor	Lexington	102	28.5	...	..	...	..	...	..

Crockett	Ratcliff	103	19.5							
E. Liberty Hill	Circleville	104	27.1							
Navasota	Cleveland	105	66.5							
Crockett	Woodville	106	74.1							
Strawn	Stephenville	108	32.8							
Tyler	Rusk	110	44.3							
Edna	Midfield	111	26.3							
Gonzales	Karnes City	112	51.9							
Victoria Co./L.	Austwell	113	15.1							
Bridgeport	Dallas	114	73.2							
Kermit	Pyote	115	26.9							
Okla. S/L.	Claude	117	156.1			20.9	13	20.9	13	
Ft. Davis	Alpine	118	24.0							
Yorktown	Goliad	119	15.3							
Old Glory	New Castle	120	86.7							
Birdville	Jct. Hwy. #40	12'	19.5							
Parsons Sw.	Cleburne	122	26.9							
San Marcos	Stockdale	123	45.3							
Stowell	Galveston	124	48.4							
Jct. Hwy. #61	Beaumont	125	44.9	5.0	11			5.0	11	
Con Can	Sabinal	127	21.0							
Victoria	Alice	128	109.6			60.2	55	60.2	55	
El Paso	N. M. S/L.	130	128.7			1.0	01	1.0	01	

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Rigid Pavements: 16 Ft. & Less Miles	16 Ft. & Less % of Tot.	16 to 18 Feet Miles	16 to 18 Feet % of Tot.	18 Ft & Less Miles	18 Ft & Less % of Tot.
Brackettville	Spofford	131	9.2	...	..	...	..	...	..
S. J. Bat. Grnd.	LaPorte Rd.	134	8.8	...	..	0.7	08	0.7	08
Jct. Hwy. #31	Troup	135	33.5	...	..	...	..	...	..
Carson Co./L.	Amarillo	136	30.4	...	..	...	..	...	..
Lubbock	Meadows	137	24.9	...	..	...	..	...	..
Tex. Okla. S/L.	Jct. Hwy. #4	138	11.1	...	..	...	..	...	..
Chilton	Marlin	139	11.4	...	..	...	..	...	..
Jct. Hwy. #66	Kingsville	141	14.5	...	..	...	..	...	..
Martindale	Lockhart	142	11.0	...	..	...	..	...	..
Glen Rose	Meridian	144	23.4	...	..	...	..	...	..
E. McKinney	Princeton	145	1.2	...	..	...	..	...	..
Polk-Liberty Co. L.	Tex. City Jct.	146	112.7	...	..	...	..	...	..
San Augustine	Zavalla	147	36.5	...	..	...	..	...	..
Red River Br.	Henrietta	148	28.5	...	..	...	..	...	..
Longview	Carthage	149	41.7	...	..	...	..	...	..
New Waverly	Shepherd	150	34.0	...	..	0.3	01	0.3	01
Menard	Mason	151	39.6	...	..	...	..	...	..
Pampa	Wheeler	152	35.1	...	..	...	..	...	..
Cooper	Quitman	154	45.8	...	..	...	..	...	..
Gilmer	Marshall	155	39.2	...	..	...	..	...	..

Point Blank	Cold Springs	156	13.5	...	..	...	..	...	..		
Jct. Hwy. #23	Breckenridge	157	31.2	...	..	...	..	...	..		
Robert Lee	S. of Abilene	158	50.5	...	..	...	..	...	..		
Oldenburg	Hempstead	159	50.6	..	..	15.4	30	15.4	30		
Denison	Jct. Hwy. #78	160	29.3	...	....	14.7	50	14.7	50		
Fannin	Fannin Park	162	0.7	...	..	...	..	...	..		
Barnhart	Ozona	163	29.5	...	..	...	..	...	..		
Mart	Limestone C/L.	164	11.0	...	..	...	..	...	..		
Austin Cemetery	Driveways	165	0.9	...	..	...	..	...	..		
Ft. Davis	McDonald Obs.	166	17.3	...	..	...	..	...	..		
Tomb Miers Expd.	La Grange	167	1.0	...	..	...	..	...	..		
S. of Canadian	Jct. Hy. #4 & 33	170	2.7	...	..	...	..	...	..		
Hillsboro	Hubbard	171	27.8	...	..	...	..	...	..		
Ganado	Olivia	172	28.2	...	..	...	..	...	..		
Walnut Spgs.	Cleburne	174	43.6	...	..	...	..	...	..		
Tyler	Kilgore	176	25.3	...	..	...	..	...	..		
Blessing	Wye	177	0.8	...	..	0.8	100	0.8	100		
Hartley	Moore Co./L.	178	13.3	...	..	...	..	...	..		
Teague	Dew	179	8.4	...	..	...	..	...	..		
Jct. Hwy. #5	Annona	180	3.1	...	..	...	..	...	..		
Gary	Jct. Hwy. #8	181	5.1	...	..	...	..	...	..		
Alba	Quitman	182	10.6	....	..	...	..	...	..		

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Rigid Pavements 16 Ft. & Less Miles	% of Tot.	16 to 18 Feet Miles	% of Tot.	18 Ft & Less Miles	% of Tot.
Dallas	Mesquite	183	11.2	...	..	0.7	06	0.7	06
Bronson	Hemphill	184	11.1	...	..	...	..	...	..
Green Lake	Seadrift	185	7.5	...	..	...	..	...	..
Willacy-Hidalgo Co./L.	N. of Raymondville	186	5.8	...	..	...	..	...	..
Cisco	Jct. Hwy. #67	187	8.7	...	..	...	..	...	..
Bastrop Co./L.	Jct. Hwy. #71	O. S. R.	91.7	...	..	...	..	...	..
Brookston	Roxton	188	5.5	...	..	...	..	...	..
Albany	Coleman	191	16.4	...	..	...	..	...	..
Mingus	Gordon	193	6.5	...	..	...	..	...	..
Dimmitt	Plainview	194	29.0	...	..	...	..	...	..
Jct. Hwy. #74	Georgetown	195	23.1	...	..	...	..	...	..
Kent	Ft. Stockton	196	76.3	...	..	...	..	...	..
Canton	Mabank	198	20.6	...	..	...	..	...	..
Olney	Jacksboro	199	31.7	...	..	...	..	...	..
Geo. West	Beeville	202	23.6	...	..	...	..	...	..
Hedley	Wellington	203	35.7	...	..	...	..	...	..
Angelina R.	Jct. Hy. #26	204	17.1	...	..	...	..	...	..
Rising Star	Coleman	206	42.8	...	..	...	..	...	..
Crosby C/L.	Ralls	207	10.9	...	..	...	..	...	..

Independence	Jct. Hy. #90	211	8.8	...	..	...	..	...	..
Canyon	State Park	217	12.4	...	..	...	..	...	..
Jct. Hwy. #95	Heidenheimer	221	5.9	...	..	...	..	...	..
Knox City	Munday	222	13.6	...	..	...	..	...	..
Jct. Hwy. #6— Houston	15.7 Mi. East	225	17.1	...	..	...	..	...	..
Totals			21,045.9	175.7	1	2,799.9	13	2,975.6	14
Total Concrete			4,437.0	175.7	4	2,799.9	63	2,975.6	67

EXHIBIT No. 3A.

Docket No. 864. Witness: Knapp.

Schedule Showing Width of Rigid Highway Pavements in Routes Specified in Application of A. E. McDonald.

From	To	Via Hy. No.	Tot. Mis. All Types	Width of Rigid Pavements: 16 Ft. & Less Miles	16 Ft. & Less % of Tot.	16 to 18 Feet Miles	16 to 18 Feet % of Tot.	18 Ft & Less Miles	18 Ft & Less % of Tot.
State Line (Denison)—Galveston Via Hys. 6-2-6.									
State Line	Hillsboro	6	142.9	23.4	16	7.4	5	30.8	21
Hillsboro	Waco	2	32.9	10.5	33	..	..	10.5	33
Waco	Galveston	6	236.2	19.5	8	3.5	1	23.0	10
Totals			414.0	53.4	13	10.9	3	64.3	16
State Line (Gainesville)—Houston Via Hys. 40-10-34-14-32-19.									
State Line	Denton	40	38.4	...	..	...	..	...	..
Denton	Ft. Worth	10	34.4	...	..	...	..	...	..
Ft. Worth	Ennis	34	55.4	...	..	...	..	...	..

Ennis	Richland	14	32.6	...	..	...	..	...	..
Richland	Huntsville	32	106.9	...	..	86.8	81	86.8	81
Huntsville	Houston	19	68.9	...	..	42.7	62	42.7	62
Totals			336.6	...	..	129.5	38	129.5	38

Waco-McAllen Via Hys. 2-66-4.

Waco	San Antonio	2	182.8	...	..	13.4	..	13.4	..
San Antonio	Pharr	66	233.5	...	..	16.1	..	16.1	..
Pharr	McAllen	4	3.3	...	..	2.9	..	2.9	..
Totals			4196	...	..	32.4	8	32.4	8
Totals—All Routes			1,170.2	53.4	4.5	172.8	14.8	226.2	19.3

Note: Rigid surfaces constitute 51.8% of total route mileage; therefore 37.2% of rigid pavements is 18' or less in width.

EXHIBIT No. 4.

Docket No. 864.

Witness: Knapp.

Statement Showing Partial List of Highway Bridges Having a Safe Loading Capacity of Less Than Seven Tons, Which Are Located Upon State Designated Highways of Texas.

As Verified by Personal Inspection of Geo. A. Knapp on the Ground.

Note:—The following list of bridges shows their safe loading capacity in terms of their condition when new. No deduction has been made for physical depreciation as described under "condition."

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
		Highway No. 3.			
173	0.3 Mi. W. Gonzales	San Marcos R.	2	4.7.	Fair
		Highway No. 5.			
532	1.1 Mi. E. Jct. #40	Unknown	2	3.0	Poor
"	0.8 " " " "	"	2	4.1	Good
		Highway No. 6.			
535	0.3 Mi. S. of Forrest Av.—Dallas	N. App. Trinity R.	2	3.7	Poor
"		S. " " "	2	3.7	Fair

"	1.1	" " " " " "	.....	Trinity R. Relief	2	3.9	Good
541	4.8	Mi. N. of Bremond	.....	Unknown	2	3.4	Fair
121	4.5	" " " "	.....	"	2	3.5	"
"	4.4	" " " "	.....	"	2	3.5	"
"	4.3	" " " "	.....	"	2	3.5	"
"	4.2	" " " "	.....	"	2	3.5	"
"	4.1	" " " "	.....	"	2	3.5	"
541	2.9	" " " "	.....	"	2	3.4	"
305	1.7	" " " "	.....	Small Branch	2	3.0	"
542	0.3	" " " "	.....	Unknown	2	2.0	"
120	8.2	" " " Calvert	.....	Barton Branch	1	3.5	"
542	6.3	" " " "	.....	.....	1	4.5	Poor
119	3.8	" " " "	.....	Walnut Cr.	2	3.5	Good
543	1.9	" " " "	.....	Unknown	2	3.7	"
119	0.4	" " " Hearne	.....	Sandy Cr.	2	3.5	"
543	0.1	" " " "	.....	Unknown	2	3.7	"

Highway No. 8.

352	8.8	Mi. N. of Carthage	.....	Sabine R.	1	6.0	Fair
345	5.6	" " " Silsbee	.....	Unknown	2	5.4	"
"	5.1	" " " "	.....	"	2	5.4	"
"	4.6	" " " "	.....	Neches R. Relief	2	5.4	"

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 9.				
286	2.1 Mi. S. Jct. with Hy. #66	Unknown	1	3.6	Good
"	2.9 " " " " " "	"	1	3.6	"
285	5.8 " " " " " "	Sulphur Cr.	1	3.6	"
"	12.4 " " " " " "	Unknown	1	7.0	Fair
"	13.8 " " " " " "	Little Gambol Cr.	1	3.6	"
"	16.0 " " " " " "	Unknown	1	3.0	"
284	16.0 " " " " " "	Gambol Cr.	1	4.4	Good
"	17.9 " " " " " "	Unknown	1	3.0	"
"	18.1 " " " " " "	"	1	4.0	"
"	18.3 " " " " " "	"	1	3.0	Poor
"	13.9 " N. " " " #12	Mullos Cr.	1	4.0	Fair
"	11.9 " " " " " "	Unknown	1	3.6	"
283	9.4 " " " " " "	"	1	3.0	"
"	9.1 " " " " " "	"	1	4.4	"
"	8.4 " " " " " "	"	1	3.5	"
"	8.0 " " " " " "	"	1	3.8	"
"	7.5 " " " " " "	"	1	3.0	"
282	4.7 " " " " " "	"	1	3.0	"

Highway No. 14.

149	1.0	Mi. S. Gunter	"	1	5.3	Fair
"	1.8	" " "	"	1	5.3	"
"	2.0	" " "	"	1	5.4	"
150.	2.5	" " "	"	1	6.3	"
151	15.4	" " "	"	2	4.8	"
153	9.7	" N. of N. C/L Dallas	McKamey Branch	2	6.2	"
528	2.9	" S. " S. " "	Trinity R. Relief	2	6.4	"
"	3.3	" " " " " "	" " "	2	6.4	"
"	3.5	" " " " " "	" " "	2	6.4	"
527	5.1	" " " " " "	5 Mile Cr.	2	6.4	"
"	5.2	" " " " " "	" " "	2	6.4	"
"	13.7	" " " " " "	Unknown	2	3.1	"
"	13.9	" " " " " "	"	2	4.3	"
"	13.9	" " " " " "	"	2	4.0	"
"	14.1	" " " " " "	"	2	5.0	"

Highway No. 15.

38	6.1	Mi. E. of Dallas		2	6.2	Good
40	8.6	" " " "		2	6.2	"
4	8.9	" " " "		2	6.2	"
"	9.0	" " " "		2	6.2	"
64	1.1	" W. of Longview		2	4.4	"

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 16.				
8	7.4 Mi. S. of San Antonio	Salado Cr.	2	3.0	Good
"	19.7 " " " " "	" "	2	4.0	"
273	7.4 " N. " Beeville	Media Cr.	2	4.9	"
	Highway No. 19.				
300	29.8 Mi. N. of N. C/L Houston	San Jacinto R. R.	2	6.2	Good
"	29.9 " " " " " " "	" " " "	2	6.2	"
"	30.6 " " " " " " "	" " " "	2	6.2	"
364	13.6 " S. " Trinity	Unknown	2	6.2	"
	Highway No. 21.				
77	0.6 Mi. E. of Alto	Larison Cr.	2	5.1	Good
"	1.8 " " " "	" "	2	5.1	"
"	4.6 " " " "	Allen Cr.	2	5.1	"
"	7.5 " " " "	Angelina Slough	1	4.1	"
"	7.7 " " " "	Angelina R. Relief	1	4.1	"
"	8.7 " " " "	Gibbons C. R. Relief	1	4.1	"

Highway No. 22.

75	5.4	Mi. E. of	Palestine	.....	Creek	2	4.2	Good
"	9.2	" " "	"	.....	Crystal Lake Branch ...	1	5.0	"
"	10.2	" " "	"	.....	.....	1	5.0	"
76	11.4	" " "	"	.....	Rices Branch	1	4.9	"
"	11.8	" " "	"	.....	.....	1	4.9	"
"	13.9	" " "	"	.....	.....	1	4.9	"
"	15.9	" " "	"	.....	Neches R.	1	6.0	"

Highway No. 24.

155	7.8	Mi. E. of	Jct. Hy. #40	.....	Spring Cr.	1	3.8	Poor
"	1.9	" " "	" " #14	.....	Mays Branch	1	7.0	Good
156	4.4	" " "	" " "	.....	Powler Cr.	1	6.8	"
"	1.2	" " "	McKinney	.....	E. Fork Trinity R.....	1	5.5	Fair
157	8.4	" " "	"	.....	Sister Grove Cr.	1	6.9	"
158	12.4	" " "	"	.....	Pilot Cr. Relief	1	5.4	Good
"	12.5	" " "	"	.....	" " "	1	5.4	"
159	12.8	" " "	"	.....	" " "	1	5.3	"
160	4.6	" " "	Farmersville	.....	Brushy Cr.	1	6.8	Fair

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 26.				
193	15.2 Mi. N. of Nacogdoches		2	5.3	Fair
"	14.2 " " " "		2	5.3	"
80	8.1 " " " "		2	4.0	Good
	Highway No. 27.				
171	2.0 Mi. W. of Cuero	Guadalupe R.	2	3.8	Good
	Highway No. 29.				
6	18.2 Mi. N. of N. C/L Cuero	Guadalupe R. Relief	2	5.0	Good
6	18.4 " " " " " "	" " " "	2	5.0	"
517	9.5 " " " " " Lockhart	Unknown	2	5.5	"
"	6.6 " " " " " Creedmoore	Boggy Cr.	2	4.6	Fair
	Highway No. 14.				
523	4.2 Mi. E. of E. C/L Hubbard	Unknown	1	4.8	Poor
524	5.0 " " " " " "	"	2	4.4	"
"	8.25 " " " " " "	Battle Cr. Relief	2	3.9	"
"	8.3 " " " " " "	" " " "	2	3.9	"

"	8.5	" " " " " "	.....	" " "	2	3.5	"
"	8.6	" " " " " "	.....	" " "	2	3.5	"
"	10.4	" " " " " "	.....	Unknown	2	2.7	"
"	13.1	" " " " " "	.....	"	2	3.5	"
525	16.7	" " " " " "	.....	"	2	4.8	"
"	21.8	" " " " " "	.....	"	1	4.0	"
407	0.4	" " " Winona	.....	"	2	6.0	Good

Highway No. 34.

53	3.3	Mi. E. of Britton	.....	Soak Cr.	1	5.4	Poor
"	4.2	" " " "	.....	Unknown	1	4.4	"
"	7.1	" " " "	.....	"	2	5.9	Good
"	2.7	" " " Midlothian	.....	Waxahachie Cr.	1	4.0	"
165	6.6	" W. " Terrell	.....	Egan Branch	1	7.0	"
164	5.0	" " " "	.....	Cartwright Cr.	1	5.7	"
"	2.3	" " " "	.....	Kings Cr. Relief	2	3.1	"
163	1.4	" E. " "	.....	" " "	1	5.5	"
"	7.1	" W. " Quinlan	.....	Mud Cr.	1	3.8	"
"	7.0	" " " "	.....	Mud Cr. Relief	1	3.8	"

Highway No. 35.

131	14.9	Mi. N. of Tenaha	.....	Hartage Cr. Slough	2	5.7	Good
"	15.8	" " " "	.....	Attoyac R.	2	5.5	"

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 35—(Continued).				
321	4.2 Mi. S. of Diboll	Neches R. Bottom	2	5.7	"
"	4.5 " " " "	" " "	2	5.7	"
"	4.6 " " " "	" " "	2	5.7	"
"	4.7 " " " "	" " "	2	5.7	"
"	4.8 " " " "	" " "	2	5.7	"
"	5.1 " " " "	" " "	2	5.7	"
"	5.2 " " " "	" " "	2	5.7	"
"	5.3 " " " "	Unknown	2	5.7	"
2	1.4 " S. " Alvin	Small Cr.	2	3.3	"
2	3.2 " " " "	Drainage Canal	2	3.2	Poor
2	8.0 " " " "	" "	1	6.1	Fair
2	8.5 " " " "	Chocolate Bayou	2	6.7	"
2	9.8 " " " "	Unknown	2	5.0	"
2	15.8 " " " "	"	2	4.5	"
2	17.3 " " " "	Flores Cr.	2	3.9	"
2	17.9 " " " "	Drain	2	6.7	"
2	18.7 " " " "	"	2	3.6	Good
2	20.5 " " " "	Small Bayou	2	4.7	Fair
2	22.0 " " " "	Drain	2	3.0	Good
2	2.4 " " " "	Oyster Cr.	2	6.3	"

109	55.1	Mi. N. of Giddings	.....	Little R. Relief	.....	2	5.3	Good
"	54.8	" " " "	.....	" " "	.....	2	5.3	"
"	54.4	" " " "	.....	" " "	.....	2	5.3	"
112	4.0	" S. of Milano	.....	Richardson Cr.	.....	1	3.5	Fair
"	5.3	" " " "	.....	Thompson Cr.	.....	1	3.8	"
113	5.8	" " " "	.....	Spring Cr.	.....	1	3.8	"
"	9.0	" " " "	.....	Black Hawk Cr.	.....	2	3.5	"
"	11.2	" " " "	.....	Davidson Slough	.....	1	3.1	Good
"	11.3	" " " "	.....	" Creek	.....	1	4.4	"
"	13.2	" " " "	.....	Copper Cr.	.....	1	4.4	"
114	18.3	" " " "	.....	First Davidson Cr.	.....	1	4.4	"
"	18.3	" " " "	.....	Harper Cr.	.....	1	4.4	"
"	19.1	" " " "	.....	Unknown	.....	1	4.4	"
"	19.5	" " " "	.....	"	.....	1	4.4	"
"	21.2	" " " "	.....	"	.....	1	4.4	"
"	22.4	" " " "	.....	Birds Cr.	.....	1	4.4	"
"	23.1	" " " "	.....	2nd Davidson Cr.	.....	1	3.5	"
"	23.7	" " " "	.....	Davidson Slough	.....	1	3.5	"
"	24.4	" " " "	.....	Sandy Cr.	.....	1	3.5	"
"	24.8	" " " "	.....	Oppermans Cr.	.....	1	3.5	"
"	27.2	" " " "	.....	Cappan Cr.	.....	1	3.5	"
"	32.0	" " " "	.....	Tye Plant	.....	1	3.5	"

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 37.				
406	2.5 Mi. S. of Mineola	Sabine R. Relief	2	6.4	Good
"	2.7 " " " "	" " "	2	6.4	"
"	3.2 " " " "	" " "	2	6.4	"
"	3.5 " " " "	" " "	2	6.4	"
	Highway No. 40.				
35	0.2 Mi. N. of S. C/L Gainesville	Elm Cr.	1	3.4	Poor
314	0.0 " " " " " "	" " Relief	1	4.2	"
37	4.0 " S. " Lewisville	Unknown	2	6.1	Good
37	4.1 " " " "	Benton Cr. Relief	2	6.1	"
37	4.2 " " " "	" " "	2	5.9	"
37	4.4 " " " "	" " "	2	6.1	"
37	2.7 " " " Carrolton	Elm Fork Trinity R.	1	3.5	"
37	2.6 " " " "	Elm Fork Trinity R. Relief	2	6.1	"
507	9.2 " S. of S. C/L Dallas	Hickory Cr.	2	5.1	"
"	9.5 " " " " " "	Unknown	2	6.5	"
"	10.3 " " " " " "	"	2	4.8	Fair

508	1.5	"	"	"	"	"	Seagoville	.....	"	.....	2	5.8	"
"	2.5	"	"	"	"	"	"	.....	E. Fork Trin. R.	Rel.	2	7.0	"
"	3.0	"	"	"	"	"	"	.....	" " " "	"	2	7.0	"
509	2.9	"	N.	of N.	C/L		Kaufman	.....	Brushy Cr.	.....	2	6.6	"
"	2.6	"	"	"	"	"	"	.....	" "	.....	2	6.6	"
"	1.75	"	"	"	"	"	"	.....	" "	.....	2	6.6	"
"	1.7	"	"	"	"	"	"	.....	" "	.....	2	6.6	"
510	2.0	"	S.	"	S.	"	"	.....	Unknown	.....	2	6.6	"
"	4.0	"	"	"	"	"	"	.....	Big Cottonwood Cr.	....	2	6.6	"
"	4.1	"	"	"	"	"	"	.....	" "	" Relf.	2	6.6	"
"	2.2	"	"	"	"	"	Jiba	.....	Lit. Cottonwood	"	2	6.6	"
"	2.3	"	"	"	"	"	"	.....	" "	" "	2	6.6	"
"	2.7	"	"	"	"	"	"	.....	Cottonwood Cr.	.....	2	6.6	"
"	0.1	"	N.	"	N.	"	Kemp	.....	Willow Cr.	.....	2	6.6	"
"	0.3	"	"	"	S.	"	"	.....	Kemp Branch	.....	2	6.6	"
"	2.4	"	S.	"	"	"	"	.....	Cedar Branch Relief	....	2	6.6	"
"	2.6	"	"	"	"	"	"	.....	" "	"	2	6.6	"
"	2.9	"	"	"	"	"	"	.....	" "	"	2	6.6	"
"	5.7	"	"	"	"	"	"	.....	Lacy Cr.	.....	2	6.6	"
"	5.9	"	"	"	"	"	"	.....	" "	Relief	2	6.6	"
"	6.0	"	"	"	"	"	"	.....	" "	"	2	6.6	"
"	6.3	"	"	"	"	"	"	.....	Lake Cr.	.....	2	6.6	"
"	7.5	"	"	"	"	"	"	.....	Cowakin Cr.	.....	2	6.6	"

Survey No.		Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
		Highway No. 45.				
86	12.5	Mi. W. of Palestine	Trinity R.	2	6.5	Good
"	12.2	" " " "	" " Slough	2	6.5	"
		Highway No. 44.				
110	60.7	Mi. N. of Giddings	Elm Cr.	2	5.3	Good
109	52.2	" " " "	Sandy Cr.	2	3.5	Poor
"	51.5	" " " "	" " Relief	2	3.5	"
"	49.2	" " " "	Copper Hollow	1	4.9	Good
108	28.9	" " " "	Allene Cr.	1	4.4	"
108	15.1	" " " "	Middle Yeguea	1	2.8	Poor
107	4.1	" " " "	Unknown	1	3.5	Good
107	3.4	" " " "	Draw	1	3.5	"
106	2.7	" " " "	Naile Cr.	1	3.5	"
367	12.8	" " " "	Unknown	1	3.5	Fair
		Highway No. 49.				
411	20.7	Mi. N. of Mt. Pleasant	Trent Lake	2	4.9	Good

"	20.2	" " " " "	.....	Sulphur R.	2 6.0 "
"	19.8	" " " " "	.....	Unknown	2 6.0 "
"	19.6	" " " " "	.....	"	2 6.0 "
"	16.9	" " " " "	.....	"	2 6.0 "
"	13.4	" " " " "	.....	"	2 6.0 "
"	11.2	" " " " "	.....	White Oak Cr.	2 6.0 "
"	11.1	" " " " "	.....	" " " Rlf.	2 6.3 "
"	10.5	" " " " "	.....	Slough	2 6.3 "
"	8.7	" " " " "	.....	Piney Cr. Relief	2 6.0 "
"	8.6	" " " " "	.....	" " "	2 6.0 "
"	8.5	" " " " "	.....	" " "	2 6.0 "

Highway No. 64.

43	10.1	Mi. W. of Tyler	.....	Neches R. Slough	2	5.5 Good
227	6.9	" E. " Carthage	.....	Sabine R.	1	5.0 Fair

Highway No. 65.

409	3.0	Mi. N. of Gilmer	.....	Little Cypress Cr.	2	6.8 Good
"	5.3	" " " "	.....	Lilly Cr.	2	6.8 "
"	5.4	" " " "	.....	" " Rlf.	2	6.8 "

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 66.				
385	17.7 Mi. S. of Blanco	Guadalupe R.	2	3.2	Good
383	12.9 " " " Hamilton	Unknown	2	4.5	"
"	10.8 " " " "	"	2	4.5	"
382	3.7 " " " "	Little Cowhouse Cr.	2	4.5	"
"	19.6 " " " Hico	Unknown	2	4.5	"
"	17.1 " " " "	Couch Cr.	2	4.5	"
"	13.9 " " " "	" "	2	4.5	"
"	4.3 " " " "	Unknown	2	4.5	"
"	2.5 " " " "	"	2	4.5	"
381	0.3 " " " "	Bosque R.	2	2.8	Poor
	Highway No. 67.				
202	0.1 Mi. E. of Iredell	Bosque R.	2	3.1	Poor
37	15.5 " " " "	" "	1	3.7	Good
203	11.7 " " " Meridian	" "	2	3.7	Poor
	Highway No. 68.				
378	11.2 Mi. W. of Cleburne	Brazos R.	1	6.0	Fair
"	11.1 " " " "	" "	1	6.0	"

377	10.1	" " " "	.....	Kennard Branch	1	4.8	Good
"	8.4	" " " "	.....	Bono Cr.	1	5.4	"
96	7.3	" N. of Midlothian	.....	Unknown	2	6.0	"
97	13.1	" " " "	.....	Ten Mile Cr.	1	6.9	"
			Highway No. 90.				
302	5.3	Mi. E. of Navasota	.....	Holland Cr.	2	5.8	Good
			Highway No. 94.				
364	15.2	Mi. S. of Groveton	.....	Unknown	2	6.3	Poor
"	15.0	" " " "	.....	White Oak Bottom	2	6.3	"
363	6.6	" " " "	.....	Slough	2	6.3	"
"	6.6	" " " "	.....	Sandy Cr.	2	6.3	"
"	6.2	" " " "	.....	Caney Cr.	2	6.3	"
363	6.1	Mi. S. of Groveton	.....	Caney Slough	2	6.3	Poor
"	3.2	" N. " "	.....	" "	2	6.3	"
"	3.25	" " " "	.....	" "	2	6.3	"
"	3.3	" " " "	.....	" "	2	6.3	"
362	13.0	" S. " Lufkin	.....	Neches R. Slough	2	6.3	Poor
"	12.9	" " " "	.....	" " "	2	6.3	"
"	12.8	" " " "	.....	" " "	2	6.3	"
"	12.7	" " " "	.....	" " "	2	6.3	"

Survey No.		Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
		Highway No. 94—(Continued).				
"	12.6	" " " "	" " "	2	6.3	"
"	12.4	" " " "	" " "	2	6.3	"
"	12.3	" " " "	" " "	2	6.3	"
"	12.0	" " " "	" " "	2	6.3	"
"	10.9	" " " "	" " Bottom	2	6.3	"
"	10.8	" " " "	" " "	2	6.3	"
"	10.7	" " " "	" " "	2	6.3	"
"	10.7	" " " "	" " "	2	6.3	"
"	10.3	" " " "	" " "	2	4.8	"
"	9.6	" " " "	Unknown	1	3.4	"
		Highway No. 105.				
16	1.1	Mi. E. of Conroe	Alligator Bayou	2	5.2	Fair
17	3.9	" " " "	Four Mile Cr.	2	5.9	"
"	6.2	" " " "	Brushy Cr.	2	5.2	"
"	6.2	" " " "	Unknown	2	5.9	"
"	6.6	" " " "	Possum Cr.	1	5.6	"
"	11.4	" " " "	Unknown	2	6.1	"
18	17.0	" " " "	Dry Gulley	2	4.8	"
"	3.1	" " " Fostoria	Draw	1	5.6	"

Highway No. 106.

511	9.3 Mi. W. of W. C/L Groveton	Brownlee Bottom	2	6.7	Good
"	9.2 " " " " " "	" Creek	2	6.7	"
"	8.4 " " " " " "	Louisville Cr.	2	6.7	"
"	8.3 " " " " " "	Copper Cr.	2	6.7	"

Highway No. 128.

448	19.2 Mi. N. of Refugio	San Antonio R.	2	4.5	Good

Highway No. 135.

196	9.3 Mi. N. of Kilgore	Prairie Cr.	2	6.4	Good
"	7.7 " " " "	Caney Cr.	2	5.3	"
"	7.6 " " " "	Creek	2	5.3	"
195	5.1 " " " "	Peavine Branch	2	5.3	"
"	2.1 " " " "	Caney Cr.	2	5.3	"
"	1.4 " " " "	Rabbit Cr.	2	6.9	Fair

Highway No. 139.

306	5.8 Mi. W. of Marlin	Brazos R.	2	6.3	Fair
"	7.1 " " " "	Unknown	2	4.2	"

Survey No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
	Highway No. 144.				
380	0.5 Mi. S. Glen Rose	Unknown	1	4.7	Good
"	2.6 " " " "	"	1	4.8	"
"	5.1 " " " "	"	2	4.6	"
"	8.1 " " " "	Hill Cr.	2	4.6	"
	Highway No. 150.				
180	0.8 Mi. E. of New Waverly	Unknown	1	5.5	Poor
"	1.0 " " " " "	"	1	4.4	"
"	1.6 " " " " "	"	1	4.4	"
"	2.0 " " " " "	"	1	4.4	"
"	2.2 " " " " "	"	1	4.4	"
"	2.4 " " " " "	"	1	4.4	"
181	3.8 " " " " "	"	1	3.6	"
"	4.3 " " " " "	"	1	4.4	"
494	5.3 " " " " "	"	2	5.2	Good
390	5.6 " " " " "	"	2	5.2	"
"	12.2 " " " " "	Winters Bayou	2	5.6	"
493	13.1 " " " " "	Pumpkin Cr.	2	6.4	"

182	1.4	"	"	"	"	"	.....	Miller Cr.	2	5.0	Poor
182	3.0	"	"	"	"	"	.....	San Jacinto R.	2	5.0	"
"	4.1	"	"	"	"	"	.....	Reese Branch	2	5.0	"

Highway No. 174.

380	3.6	Mi. W. of Jct. Hwy. #144	Bosque R.	1	4.4	Good

Highway No. 195.

520	6.0	Mi. E. of Jct. #67	.....	2	5.5	Good

EXHIBIT 4A.

Docket No. 864. Witness: Knapp.

Statement Showing Partial List of Highway Bridges Having a Safe Loading Capacity of Less Than Seven Tons, Which Are Located Upon Routes Proposed in the Application of A. E. McDonald.

Note:—The following list of bridges shows their safe loading capacity in terms of their condition when new No deduction has been made for physical depreciation as described under "condition."

Survey No.	Hwy. No.	Location of Bridge	Name of Stream	1 or 2 Way	Safe Load (Tons)	Condition
		State Line (Denison)—Galveston Via Hys. 6-2-6.				
535	6	0.3 Mi. S. of Forrest Av.—Dallas	N. App. Trinity R.	2	3.7	Poor
"	6	" " " " "	S. " " "	2	3.7	Fair
"	6	1.1 " " " " " "	Trinity R.—Relief	2	3.9	Good
541	6	4.8 Mi. N. of Bremond	Unknown	2	3.4	Fair
121	6	4.5 " " " "	"	2	3.5	"
"	6	4.4 " " " "	"	2	3.5	"
"	6	4.3 " " " "	"	2	3.5	"

"	6	4.2	"	"	"	"	"	"	2	3.5	"
"	6	4.1	"	"	"	"	"	"	2	3.5	"
541	6	2.9	"	"	"	"	"	"	2	3.4	"
305	6	1.7	"	"	"	"	Small Branch		2	3.0	"
542	6	0.3	"	"	"	"	Unknown		2	2.0	"
120	6	8.2	"	"	"	Calvert	Barton Branch		1	3.5	"
542	6	6.3	"	"	"	"	Unknown		1	4.5	Poor
119	6	3.8	"	"	"	"	Walnut Cr.		2	3.5	Good
543	6	1.9	"	"	"	"	Unknown		2	3.7	"
119	6	0.4	"	"	"	Hearne	Sandy Cr.		2	3.5	"
543	6	0.1	"	"	"	"	Unknown		2	3.7	"

State Line (Gainesville)—Houston Via Hys. 40-10-34-14-32-19.

35	40	0.2	Mi. N. of S. C/L—Gainesville				Elm Cr.		1	3.4	Poor
314	40	0.0	"	"	"	"	"	"	1	4.2	"
53	34	3.3	" E.	"	Britton		Soar Cr.		1	5.4	"
"	34	4.2	"	"	"	"	Unknown		1	4.4	"
"	34	7.1	"	"	"	"	"		2	5.9	Good
"	34	2.7	"	"	"	Midlothian	Waxahachie Cr.		1	4.0	"
300	19	29.8	"	"	"	N. C/L Houston	San Jacinto R.		2	6.2	"
"	19	29.9	"	"	"	"	"	"	2	6.2	"
"	19	30.6	"	"	"	"	"	"	2	6.2	"

EXHIBIT No. 5.

Docket No. 864. Witness: Knapp.

Number of Motor Passenger Cars and Trucks in Texas 1915 to 1934 Inclusive.

All statistics for United States are from "Facts and Figures of N. A. C. of C. 1935," pages 18-20. Texas classifications shown for years 1924 to 1934 incl. are as per records of Texas State Highway Department. For the years 1917 to 1923 incl. the total number of unclassified motor vehicles for Texas are as shown by the records of Texas State Highway Department. Years 1915 and 1916 are as shown in Statistical Abstract of the U. S. (1922), page 291.

	United States				Texas				
Year	Number of Pass. Cars	Number of Trucks	Total Number of Vehicles	Trucks % of Tot. Vehicles	Number of Pass. Cars	Number of Trucks	Total Number of Vehicles	Trucks % of Tot. Vehicles	Compar.* Truck Density
1915	2,309,666	136,000	2,445,666	5.5	39,504	496	40,000	1.2	22%
1916	3,297,996	215,000	3,512,996	6.1	122,725	2,275	125,000	1.8	30%
1917	4,657,340	326,000	4,983,340	6.5	190,442	4,278	194,720	2.2	34%
1918	5,621,617	525,000	6,146,617	8.5	239,617	10,584	250,201	4.2	50%
1919	6,771,074	794,372	7,565,446	10.5	311,420	20,301	331,721	6.1	58%
1920	8,225,859	1,006,082	9,231,941	10.9	402,359	28,018	430,377	6.5	60%
1921	9,346,195	1,118,520	10,464,715	10.7	440,505	30,070	470,575	6.4	60%

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1922	10,864,128	1,375,725	12,239,853	11.1	495,565	36,043	531,608	6.8	61%
1923	13,479,608	1,612,569	15,092,177	10.7	651,429	44,393	695,822	6.4	60%
1924	15,460,649	2,134,724	17,595,373	12.1	766,149	65.536	840,559	7.8	64%
1925	17,512,638	2,441,709	19,954,347	12.2	882,994	88,207	983,420	9.0	74%
1926	19,237,171	2,764,222	22,001,393	12.6	941,791	104,794	1,060,716	9.9	79%
1927	20,219,224	2,914,019	23,133,243	12.6	995,366	114,874	1,126,982	9.8	78%
1928	21,379,125	3,113,999	24,493,124	12.7	1,058,695	153,902	1,235,162	12.5	98%
1929	23,121,589	3,379,854	26,501,443	12.7	1,162,067	180,062	1,342,129	13.4	105%
1930	23,059,262	3,486,019	26,545,281	13.1	1,199,940	206,574	1,406,514	14.7	112%
1931	22,366,313	3,466,571	25,832,884	13.4	1,095,270	207,635	1,302,905	15.9	118%
1932	20,885,814	3,229,315	24,115,129	13.4	996,191	189,051	1,185,242	16.0	119%
1933	20,616,234	3,227,357	23,843,591	13.5	978,431	181,758	1,160,189	15.7	116%
1934	21,524,068	3,409,335	24,933,403	13.7	1,064,529	220,180	1,284,709	17.3	126%

*Truck Density as herein used is the ratio of Texas Trucks percent of total vehicles in Texas to the U. S. Trucks percent of total vehicles in the U. S.

EXHIBIT No. 6.

Docket No. 864. Witness: Knapp.

Texas Motor Vehicle Registrations, by Classes, for Years 1917 to 1935, Inclusive.

As Shown by Records of State Highway Dept. of Texas

Year	Passenger Cars	Trucks	Motor Busses	Motor Cycles	Side Cars	Tractors	Trailers	Total
1917	190,442	4,278						194,720
1918	239,617	10,584						250,201
1919	311,420	20,301	No record kept for years					331,721
1920	402,359	28,8018	1917 to 1923					430,377
1921	440,505	30,070						470,575
1922	495,565	36,043						531,608
1923	651,429	44,393						695,822
1924	766,149	65,536	3,764	2,738	....	122	2,250	840,559
1925	882,994	88,207	4,241	2,780	....	592	4,606	983,420
1926	941,791	104,794	4,158	2,688	....	359	6,931	1,060,716
1927	995,366	114,874	3,260	3,103	....	460	9,919	1,126,982
1928	1,058,695	153,902	5,850	3,507	....	1,079	12,129	1,235,162

1929	1,162,067	180,062	4,938	4,037	....	533	14,826	1,366,463
1930	1,199,940	206,574	1,953	4,093	587	495	29,470	1,443,112
1931	1,095,270	207,635	1,445	3,860	604	540	30,457	1,339,811
1932	996,191	189,051	904	3,299	488	237	36,167	1,226,337
1933	978,431	181,758	645	3,212	389	138	36,293	1,200,866
1934	1,064,529	220,180	715	3,427	321	108	35,803	1,325,083
1935	1,105,806	246,738	775	3,407	243	114	37,397	1,394,480

Statement Showing Relative Registrations of Passenger Cars and Trucks in Texas for Years 1925 to 1935 Inclusive

	Passenger Cars Per Cent of 1925 Registrations		Trucks Per Cent of 1925 Registrations	
	Number	Per Cent	Number	Per Cent
1925	882,994	100%	88,207	100%
1926	941,791	107%	104,794	119%
1927	995,366	113%	114,874	130%
1928	1,058,695	120%	153,902	174%
1929	1,162,067	132%	180,062	204%
1930	1,199,940	136%	206,574	234%
1931	1,095,270	124%	207,635	235%
1932	996,191	113%	189,051	214%
1933	978,431	111%	181,758	206%
1934	1,064,529	121%	220,180	250%
1935	1,105,806	125%	246,738	280%

Docket No. 864.

EXHIBIT No. 7.

Witness: Knapp.

Statement Showing Annual Mileage, Tonnage and Vehicle Statistics of Common, Contract and Special Commodity Motor Carriers Operating Under Authority of the Texas Railroad Commission, Being as Shown by the Annual Reports of the Motor Transport Division for the Years 1932-'33-'34-'35.

Note: Returns for Year 1935 are incomplete.

	1932	1933	1934	1935
Average number of trucks operated	1,545	1,524	1,936	2,033
Total tons of freight transported	465,161	521,537	885,536	881,187
Total truck miles operated	33,991,443	38,260,127	59,926,986	63,158,644
Average tons per truck	301	342	457	433
Average miles per truck	22,001	25,105	30,954	31,067
Total number of trucks authorized	3,075	3,083	2,567	3,404
Tons of freight possible of being moved in trucks authorized, based upon average load of truck operated	925,575	1,054,386	1,173,119	1,473,932
Potential tonnage per cent of 1932	100%	114%	127%	159%
Truck miles possible in trucks authorized, based upon average distance run by truck operated	67,653,075	77,398,715	79,458,918	105,752,068
Potential truck mileage per cent of 1932	100%	114%	117%	156%

94 EXHIBIT No. 8.

Docket No. 864. Witness: Knapp.

Statement Showing Comparison of Population and the Number of Motor Vehicle Registrations for Entire State of Texas with Counties Traversed by the Highways Specified in the Application of A. E. McDonald.

Note: Population is as shown by U. S. Census of 1930. Motor Vehicle Registrations are as shown by records of Texas State Highway Department for fiscal year ending August 31st, 1935.

	No. of Counties	Population	No. of M. V. Regis.
Entire State	254	5,824,715	1,408,875
Routes Applied for Total	34	2,221,368	576,815
Percent of Entire State	13.4	36.1	40.9

Details of Population and Motor Vehicle Registration in Counties Traversed by Routes Applied for.

Name of County	Population	Motor Vehicle Registration
Grayson	65,483	14,458
Collin	46,180	9,682
Dallas	325,691	97,935
Ellis	53,936	10,693
Hill	43,036	8,625
McLennan	98,682	24,478
Falls	38,771	6,561
Robertson	27,240	3,278
Brazos	21,835	5,396
Grimes	22,642	3,261
Waller	10,014	2,671
Harris	369,328	112,773
Galveston	64,401	16,280
Cooke	24,136	6,350

Name of County	Population	Motor Vehicle Registration
Denton	32,822	7,783
Tarrant	197,553	57,621
Navarro	60,507	9,439
Freestone	22,589	3,278
Leon	19,898	2,005
Madison	12,227	1,961
Walker	18,528	2,811
Montgomery	14,588	4,477
Bell	50,030	11,748
Williamson	44,146	11,052
Travis	77,777	21,966
Hays	14,915	4,144
Comal	11,984	4,369
Guadalupe	28,925	6,376
Bexar	292,533	78,323
Atascosa	15,654	3,155
Live Oak	8,956	1,945
Jim Wells	13,456	2,951
Brooks	5,901	1,001
Hidalgo	77,004	17,979
Totals	2,221,368	576,615

95 5. The Court erred in its finding as a fact, as set out in Paragraph 5 in the original findings of fact on file herein, that for a long time prior to June 1, 1935, and at all times since June 1, 1935, complainant has been continuously in bona fide operation engaged in the business of transporting property for hire over the highways of the State of Texas and Oklahoma exclusively in interstate commerce.

6. The Court erred in its finding as a fact, as set out in Paragraph 8 of the original findings of fact on file herein, that complainant filed an application with the Interstate Commerce Commission for an interstate certificate within the time fixed by the

Federal Motor Carrier Act, 1935, or within the time required by the Interstate Commerce Commission of the United States under appropriate orders of said Interstate Commerce Commission extending the effective date of Section 206 thereof consistent with the terms of said Act.

7. The Court erred in its finding as a fact, as set out in Paragraph 12 of the Original Findings of Fact on file herein, that all of complainant's said trucks in all respects comply with all police requirements under the applicable laws of the State of Texas.

96 8. The Court erred in concluding as a matter of law, as set out in Paragraph 1 of the Conclusions of Law on file herein, that it had jurisdiction of the parties and subject matter of this cause, and that the complainant has pleaded and proved jurisdiction and equity.

9. The Court erred in concluding as a matter of law, as set out in Paragraph 2 of the Conclusions of law on file herein, that what is known as the Motor Carrier Act, 1935, passed by the 74th Congress (Senate Bill 1629) became effective on August 9, 1935, except as to Section 227 thereof except to the power of the Interstate Commerce Commission to postpone the taking effect of any provision of the Act (other than Section 227) until such time after October 1, 1935, as the Commission shall prescribe, but not later than April 1, 1936; that said Act supersedes the Texas Motor Truck Laws (Acts 42nd Legislature, 1931, page 480, Chapter 277) in so far as said Texas Act gave to the Railroad Commission of Texas power to forbid the use of Federal Highways Nos. 75, 77, 80, 81, 290, 90, and 281 by complainant's trucks when engaged exclusively in the transportation of property in interstate commerce.

10. The Court erred in concluding as a matter of law, as set out in Paragraph 3 of the Conclusions of Law on file herein, that the phrase "if any such carrier or predecessor in interest was in bona fide operation as a common carrier by motor vehicle on June 1, 1935" as used in Section 206 of the Motor Carrier Act, 1935 (Senate Bill 1629), properly construed relates to the actual physical continuous and regular operation of such carrier on June 1, 1935, and continuously ever since.

97 11. The Court erred in concluding as a matter of law, as set out in Paragraph 4 of the Conclusions of Law on file herein, that complainant was in bona fide operation on and prior to June 1, 1935, and has been continuously in such operation since said date.

12. The Court erred in concluding as a matter of law, as set out in Paragraph 5 of the Conclusions of Law on file herein, that complainant has complied with all applicable police requirements of the State of Texas.

13. The Court erred in concluding as a matter of la , as set out in Paragraph 6 of the Conclusions of La on file herein, that complainant is entitled to a permanent injunction against the Railroad Commission of Texas and individual members composing said Railroad Commission of Texas; Mark Marshall, the acting director of the Motor Transportation Division of the Railroad Commission of Texas; Walton D. Hood, W. B. Renfro, and Tom Miller, inspectors and law enforcement officers of the Railroad Commission of Texas together with all of their agents, representatives, and employees, enjoining and restraining respondents and each of them, their agents, employees, and representatives from molesting or in any way interfering with complainant's operation within the State of

Texas in interstate transportation of property by motor truck for hire.

14. The Court erred in entering the final decree herein granting to complainant a permanent injunction against respondents.

98 Prayer.

Wherefore the respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, and each of them, pray that said final decree aforesaid entered on July 16, 1936, as amended by order made and entered on the 13 day of October, A. D. 1936, be reversed, and that the order granting permanent injunction be directed to be set aside.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Respondents.

ORDER ALLOWING APPEAL AND FIXING BOND.

99 Filed Oct. 13, 1936.

(Title Omitted.)

Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, respondents in the above entitled and numbered cause, having filed herein a petition for an appeal from the final decree of this Court made and entered

on the 16th day of July, A. D. 1936, as amended by order made and entered on October 13, A. D. 1936, the Court is of the opinion that said petition should be granted.

It is therefore Ordered, Adjudged and Decreed by the Court that an appeal by respondents to the United States Circuit Court of Appeals for the Fifth Circuit from the final decree of this Court heretofore entered herein on the 16th day of July, A. D. 1936, as amended by order made and entered on October 13, A. D. 1936, be, and the same hereby is allowed, and that a certified transcript of the record be forwarded to the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana.

It is Further Ordered that the appellants furnish a bond on appeal in the amount of Five Hundred ($500.00) Dollars, conditioned as required by law, the same to operate as a cost bond only.

100 This the 13 day of October, A. D. 1936.

JAMES C. WILSON,
United States District Judge.

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101 WAIVER OF CITATION ON APPEAL.

Filed Oct. 13, 1936.

(Title Omitted.)

Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, having filed their assignment of errors and petition for an appeal, and having been allowed an appeal to review the final decree of the Court granting a per-

manent injunction entered on July 16th, 1936, as amended by order made and entered on October 13, A. D. 1936, A. E. McDonald, by his attorneys of record, hereby waives the issuance of citation on appeal, and agrees to enter his appearance in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, within thirty days from the allowance of such appeal.

A. E. McDONALD,
By T. S. CHRISTOPHER,
PRICE & CHRISTOPHER,
WM. E. DAHL,
Attorneys of Record for A. E. McDonald.

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102 APPEAL BOND.

Filed Oct. 13, 1936.

(Title Omitted.)

Know all Men by these Presents:

That we, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, as principals, and Continental Casualty Company of Chicago, Illinois, a body corporate, as surety, are held and firmly bound unto A. E. McDonald in the sum of $500.00, to which payment well and truly to be made, we bind ourselves jointly and severally, our heirs, executors, administrators, successors, and assigns, respectively, firmly by these presents, conditioned as follows:

Whereas, the respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, have prosecuted their appeal to the United States Circuit Court of Appeals for the Fifth Circuit to reverse the final decree entered in said cause by the United States District Court for

the Northern District of Texas, Fort Worth Division, on the 16th day of July, A. D. 1936, as amended by order made and entered on October 13, A. D. 1936, in the above entitled and numbered cause, whereby the Court granted a permanent injunction against said respondents.

103 "Now, Therefore, the condition of the above obligation is such that if the above named respondents, Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then this obligation is to be void, otherwise to remain in full force and effect.

Witness our hands, this 13 day of October, A. D. 1936.

ERNEST O. THOMPSON,
C. V. TERRELL,
LON A. SMITH,
THE RAILROAD COMMISSION OF TEXAS,
(Composed of Ernest O. Thompson, C. V. Terrell, and Lon A. Smith),
WALTON D. HOOD,
W. B. RENFRO,
TOM MILLER,
By CURTIS E. HILL,
Attorney of Record,
Principals,
CONTINENTAL CASUALTY COMPANY OF CHICAGO, ILLINOIS, Surety,
By ETHEL L. ROEDER. (Seal)

O. K. as to surety.

....., Clerk,
By ....., Deputy Clerk.

The above bond examined and approved this the 13 day of October, A. D. 1936.

JAMES C. WILSON,
United States District Judge.

STATEMENT OF EVIDENCE UNDER EQUITY RULE 75.

104 Filed October 31, 1936.

(Title Omitted.)

The following is the statement of the evidence, in narrative form, produced upon the trial of the above entitled and numbered cause deemed by the appellants necessary for the consideration of the errors assigned.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Appellants.
ERNEST O. THOMPSON,
C. V. TERRELL, and
LON A. SMITH,
Each individually, the Railroad Commission of Texas, Walton D. Hood, W. D. Renfro, and Tom Miller.

105 STATEMENT OF EVIDENCE UNDER EQUITY RULE 75.

In the District Court of the United States for the Northern District of Texas, Fort Worth Division.

A. E. McDonald, Complainant,
vs. No. 864 In Equity.
Ernest O. Thompson, et al., Respondents.

Be It Remembered, that the following is a true, full and correct statement, in narrative form, of all of the evidence adduced, and proceedings had upon the trial of the above entitled and numbered cause before the Honorable James C. Wilson, United States District Judge, for the Northern District of Texas, which relates to the matter and questions on appeal herein, except certain original exhibits to be forwarded to the Court.

Appearances:

T. S. Christopher, Lloyd E. Price and William E. Dahl, Fort Worth, Texas, appearing for the complainant.

William McCraw, Attorney General of Texas, and Curtis E. Hill, Assistant Attorney General, appearing for the respondents:

Complainant's Case.

A. E. McDONALD, complainant and witness for Complainant (Affidavit):

My name is A. E. McDonald. I am a resident of the City of Waxahachie, Ellis County, Texas, and have there resided for the past 22 years. For the

past three and one-half years, on each and every day, I have regularly, continuously, legally, lawfully, and in good faith, operated trucks, exclusively in interstate commerce, over the highways of the State of Texas for hire.

106 At all times I have caused such trucks so used by me to meet all police requirements of the State of Texas, with reference to the manner of operation, the height, length and width thereof, braking and lighting equipment, and any and all other rules and regulations with reference to the manner of operation and physical requirements of such trucks. I have kept said trucks at all times properly licensed with the State Highway Department to operate over the highways of the State of Texas.

The Railroad Commission of Texas denied me a certificate to operate exclusively in interstate commerce but I honestly and in good faith, believing that I was entitled to such certificate, appealed from such order of the Railroad Commission to the 126th District Court of Travis County, Texas, where judgment was on November 14, 1934, rendered and entered, setting aside such order of the Railroad Commission, declaring same null and void and permanently enjoining the respondents, and each of them, together with their agents, servants and representatives from in any way interfering with or molesting me in the operation of my trucks over the highways of the State of Texas in interstate commerce, and I continued my operation until January 15th, 1936, when the Court of Civil Appeals, Third Supreme Judicial District, dissolved the said injunction.

At all times during such motor carrier operation I kept continuously in force and on file with the Railroad Commission of Texas and the Corporation Commission of Oklahoma public liability and property damage insurance covering my trucks and motor equipment.

I now in good faith honestly believe that under the terms of the Motor Carrier Act, 1935, I am entitled to a certificate of convenience and necessity from the Interstate Commerce Commission authorizing me to continue my operations exclusively in interstate commerce over the highways of the State of Texas; and at this time I have almost completed my application to the Interstate Commerce Commission for such certificate of convenience and necessity and same will be completed and filed before February 12th, 1936, before my "Grandfather Rights" are extinguished by lapse of time. I have met all requirements of the Motor Carrier Act, 1935, and all applicable rules and regulations of the Interstate Commerce Commission, and will at all times in the future comply with the requirements of said Act, and said rules and regulations. On the 15th day of January, A. D. 1936; I was ordered by Walton D. Hood, Chief Law Enforcement Officer of the Railroad Commission to cease my motor carrier operations over the highways of Texas, and he circulated instructions to all law enforcement officers in Texas to stop my trucks and arrest, file complaints against, and prosecute my drivers. On January 16th, 1936, one of my trucks laden with property moving over the public highways exclusively in interstate commerce was stopped and detained by two of the Railroad Commission Inspectors until this Honorable Court issued the restraining order in this case, such detention lasting about two or three days. My motor transportation operation for hire has consisted in the moving from ship side at Port Houston, Texas of commodities originating in other states or foreign countries destined for points in Texas or Oklahoma; in moving to ship side at Port Houston, Texas, commodities originating in Texas or Oklahoma and destined for other states and foreign countries, or in moving commodities between Texas and Oklahoma. I now am, and have been, authorized by the Corporation Commission of Okla-

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homa under two permits to operate over the public highways of that state as an interstate motor carrier for hire.

The value of my rights to operate over the highways of Texas and Oklahoma as an interstate carrier for hire; the value of my "Grandfather Rights" secured to me by my past operations, and the Motor Carrier Act, 1935; and the value of my equipment is from Ten Thousand ($10,000) Dollars to Fifty Thousand ($50,000) Dollars.

"During the past four or five years, I have operated my trucks almost two million miles over the
108 highways described in my Bill of Complaint on file herein; I find that such highways are not congested; I have had no accident in which any person was killed or injured, nor have I had difficulty in operating over such highways with safety for the traveling public.

JOHN SHAW, witness for complainant (Affidavit):

My name is John Shaw. I have lived in Waxahachie, Texas, for thirty-four years, and since 1932 I have been employed by A. E. McDonald, in connection with the operation of his interstate truck line for compensation and hire. For the last three and one-half years I have driven trucks for A. E. McDonald and I know that during said time Mr. McDonald has continuously operated exclusively in interstate commerce over the highways of Texas.

I am familiar with the requirements of the laws of the State of Texas as to the height, width, length, lighting and braking equipment, and licensing of trucks and equipment, and all trucks and equipment used by A. E. McDonald have met all such requirements.

In driving A. E. McDonald's trucks, I always kept within the speed limit prescribed by law and operated same safely and carefully with due regard to the rights

of other motor vehicle operators on the highways. I am familiar with the physical and mechanical condition of Mr. McDonald's trucks and same are in such condition physically and mechanically that they may be safely operated over the highways of Texas.

On January 16th, 1936, I was driving one of A. E. McDonald's trucks laden with coffee received at ship side at Port Houston, Texas, destined for Dallas, Texas, over State Highway No. 75, and I was stopped and arrested, and said truck detained by two of the Railroad Commission Inspectors at Conroe, Texas. Complaint was filed against me and bond required which bond I made and was released. The two Railroad Commission Inspectors then told me that I could not carry my cargo on but that I might unload same and drive the truck on. I then, as I was com-
109 pelled to do, left the truck and its cargo in Conroe and returned to my home at Waxahachie, Texas. I could not and did not move such truck and its cargo to Dallas until January 20, 1936, after the Court issued its restraining order in this case.

JIM TATE, witness for Complainant (Affidavit):

My name is Jim Tate. I have lived in Waxahachie, Texas, since 1920, and since 1928 I have been employed by A. E. McDonald, in connection with the operation of his interstate truck line for hire. For the last three and one-half years I have driven trucks for A. E. McDonald and I know that during said time Mr. McDonald has continuously operated exclusively in interstate commerce over the highways of Texas.

I am familiar with the requirements of the laws of the State of Texas as to the height, width, length, lighting and braking equipment, and licensing of trucks and equipment, and all trucks and equipment used by A. E. McDonald have met all such requirements.

In driving A. E. McDonald's trucks, I always kept within the speed limit prescribed by law and operated same safely and carefully with due regard to the rights of other motor vehicle operators on the highways. I am familiar with the physical and mechanical condition of Mr. McDonald's trucks and same are in such condition physically and mechanically that they may be safely operated over the highways of Texas.

ED REEVES, witness for complainant (Affidavit):

My name is Ed Reeves. I have lived in Waxahachie, Texas, since 1922, and since 1931 I have been employed by A. E. McDonald, in connection with the operation of his interstate truck line for hire. For the last four years I have driven trucks for A. E. McDonald, and I know that during said time Mr. McDonald has continuously operated exclusively in interstate commerce over the highways of the State of Texas.

110 I am familiar with the requirements of the laws of the State of Texas as to the height, width, length, lighting and braking equipment, and licensing of trucks and equipment, and all trucks and equipment used by A. E. McDonald have met all such requirements.

In driving A. E. McDonald's trucks, I always kept within the speed limit prescribed by law and operated same safely and carefully with due regard to the rights of other motor vehicle operators on the highways. I am familiar with the physical and mechanical condition of Mr. McDonald's trucks and same are in such condition physically and mechanically that they may be safely operated over the highways of Texas.

RAY KING, witness for Complainant (Affidavit):

My name is Ray King. I have lived in Waxahachie, Texas, since 1922, and since 1933 I have been em-

ployed by A. E. McDonald, in connection with the operation of his interstate truck line for hire. For the last three years I have driven trucks for A. E. McDonald and I know that during said time Mr. McDonald has continuously operated exclusively in interstate commerce over the highways of the State of Texas.

I am familiar with the requirements of the laws of the State of Texas as to the height, width, length, lighting and braking equipment, and licensing of trucks and equipment, and all trucks and equipment used by A. E. McDonald have met all such requirements.

In driving A. E. McDonald's trucks, I always kept within the speed limit prescribed by law and operated same safely and carefully with due regard to the rights of other motor vehicle operators on the highways. I am familiar with the physical and mechanical condition of Mr. McDonald's trucks and same are in such condition physically and mechanically that they may be safely operated over the highways of Texas.

111 W. D. COLVIN, witness for Complainant, (Affidavit):

My name is W. D. Colvin. I live in Waxahachie, Texas, and I am County Judge of Ellis County.

A. E. McDonald of Waxahachie, Texas, has been continuously operating trucks over the aforesaid Federal Highway since January 1st, 1933. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipment, and other respects, and all of same are properly licensed under the laws of Texas.

T. P. GODFREY, witness for Complainant (Affidavit):

My name is T. P. Godfrey. I am Constable of Precinct No. 1, Ellis County, Texas.

A. E. McDonald of Waxahachie, Texas, has been continuously operating trucks over the aforesaid Federal Highway since 1933. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have all been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipments, and other respects, and all of same are properly licensed under the laws of Texas.

TOM J. BALL, witness for complainant (Affidavit):

My name is Tom J. Ball. I am Judge of the 40th Judicial District of Texas at Waxahachie, Ellis County, Texas.

A. E. McDonald of Waxahachie, Texas, has been continuously operating trucks over the Federal Highways since 1932. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipment, and other respects, and all of same are properly licensed under the laws of Texas.

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W. E. ROTHROCK, witness for Complainant (Affidavit):

My name is W. E. Rothrock. I am City Marshal of Waxahachie, Ellis County, Texas.

A. E. McDonald has continuously operated trucks over the aforesaid Federal Highway since 1931. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipment, and other respects, and all of same are properly licensed under the laws of Texas.

JOHN BERT GRAHAM, witness for Complainant (Affidavit):

My name is John Bert Graham and I am Mayor of the City of Waxahachie, Texas.

A. E. McDonald of Waxahachie, Texas has been continuously operating trucks over the aforesaid Federal Highway since 1932. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipment, and other respects, and all of the same are properly licensed under the laws of Texas.

113 DAVE FEARIS, witness for Complainant, (Affidavit):

My name is Dave Fearis, and I am Sheriff of Ellis County, Texas.

A. E. McDonald of Waxahachie, Texas, has been continuously operating trucks over the aforesaid Feder-

al Highway since 1932. I have had many opportunities to observe the trucks operated by A. E. McDonald and their manner of operation, and same have been carefully operated and in a manner safe to the general traveling public, and same have never been overloaded, all of said trucks complying in all respects with the police requirements of the State of Texas as to height, length, width, lighting and braking equipment, and other respects, and all of same are properly licensed under the laws of Texas.

J. S. HERRING, witness for Complainant, (Affidavit):

My name is J. S. Herring. I am President of Ideal Laboratories, engaged in manufacturing and selling family medicines, flavoring extracts, and toilet articles, and have so been engaged since 1907.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Owens-Illinois Glass Company, Knox Glass Company, Atlantis Sales Corporation, Hockins Glass Company, destined for Waxahachie, Texas, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since January 1st, 1933, to my knowledge.

114 JOHN GENARO, witness for Complainant, (Affidavit):

My name is John Genaro. I am engaged in the business of wholesale fruits and produce, and have been so engaged since 1913.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Virginia, Brazil, and Honduras, destined for Dallas, Texas, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since January 1st, 1933, to my knowledge.

J. W. PRATER, witness for Complainant, (Affidavit):

My name is J. W. Prater. I am engaged in the business of the distribution of books, and have been so engaged since 1919.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Boston, Massachusetts, destined for Dallas, Texas, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since July, 1934, to my knowledge.

J. V. FOLSON, witness for Complainant (Affidavit):

My name is J. V. Folson. I am engaged in the business of manufacturing and distributing electrical items, and have been so engaged for the last twenty-five years.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating in each and all of the New England States, and destined for Dallas, Texas, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

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A. E. McDonald has been continuously operating in interstate commerce since January 1, 1935, to my knowledge.

J. E. HUNT, witness for Complainant (Affidavit):

My name is J. E. Hunt. I am engaged in the business of importing and manufacturing coffee, and have been so engaged for the last five years.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Brazil, New Orleans, and New York, destined for Dallas, Texas, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since January 1st, 1933, to my knowledge.

WM. E. WILDS, witness for Complainant (Affidavit):

My name is Wm. E. Wilds. I am engaged in the business of shipping cottonseed linters to Europe and locations in the United States, and have been so engaged for the last five years or longer.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Oil Mill locations in Texas and Oklahoma, destined for Houston and Galveston for Coastwise and European destinations, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since January, 1934, to my knowledge.

116 W. H. MARSH, witness for Complainant (Affidavit):

My name is W. H. Marsh. I am engaged in the business of manufacturing glass, and have been so engaged for the last twenty-three years.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at West Virginia, Pennsylvania and Oklahoma, destined for various Texas points, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since April 1st, 1935, to my knowledge.

T. E. BURLESON, witness for Complainant (Affidavit):

My name is T. E. Burleson. I am engaged in the business of packing honey, and have been so engaged since 1926.

In connection with such business I use commodities regularly moving in interstate commerce, same, for the most part, originating at Waxahachie, Texas, destined for New York City, and same moving continuously from origin to destination by some common carrier—either rail, water, or motor vehicle.

I have often required the interstate transportation services of A. E. McDonald and will continue to do so in the future.

A. E. McDonald has been continuously operating in interstate commerce since January 1, 1933, to my knowledge.

T. S. CHRISTOPHER, witness for Complainant (Affidavit):

My name is T. S. Christopher. I am attorney of record for complainant in this case, and I know that complainant filed with the Interstate Commerce Commission at Washington, D. C., his application for an interstate common carrier motor carrier's certificate of convenience and necessity on the 8th day of February, A. D. 1936, same complying with the re-
117 quirements of the Motor Carrier Act, 1935, and the applicable rules and regulations of the Interstate Commerce Commission. A. E. McDonald has duly complied with all applicable rules and regulations of the Interstate Commerce Commission, including the filing of tariffs within the time prescribed.

BRYAN BELL, witness for Complainant (Affidavit):

My name is Bryan Bell. I have been employed with the Motor Transportation Division of the Railroad Commission of Texas since on and prior to June 1, 1935, and it is my duty to receive, check, approve, or

disapprove, and file insurance policies required of motor carriers under the Motor Carrier law of Texas.

A. E. McDonald has had approved policies of property damage, public liability, and cargo insurance continuously on file with such division of the Railroad Commission of Texas since on and prior to June 1, 1935.

BUCK EARLY, witness for Complainant (Affidavit-:

My name is Buck Early and I am Maintenance Engineer for the State Highway Department of the State of Texas.

Each and everyone of the public highways in Texas mentioned in the Bill of Complaint on file in this cause, and over which A. E. McDonald herein alleges that he has used and contends for a right to use in his interstate motor carrier operation for hire, are Federal Designated and Federal aided highways except the portion of one highway between Three Rivers and George West.

Evidence for Respondents.

Amended answer for respondents verified by Tilden L. Childs, was offered in evidence (shown on folios .... to .... of this record).

R. E. MOORE, witness for Respondents' (Affidavit):

"I, R. E. Moore, am the Clerk of the Court of Civil Appeals of the 3rd Supreme Judicial District of Texas at Austin, Texas, and as such Clerk it is my
118 official duty to receive and file all legal documents in connection with the proceedings in

such Court of Civil Appeals. There was recently pending in such Court of Civil Appeals a case styled Railroad Commission, et al., Appellant, vs. A. E. McDonald, Appellee, No. 8284, which was appealed from the District Court of Travis County, Texas. This cause was decided by the Court of Civil Appeals on the 8th day of January, A. D. 1936, by the Court's opinion being filed on such date and judgment being rendered on such date in accordance with such opinion, and such judgment has been by me duly entered of record in the minutes of this Court; that under the statutes of the State of Texas fifteen days is allowed from the date of the filing of the opinion of the Court of Civil Appeals in a cause and the rendition of a judgment in a cause within which parties litigant may file a motion for rehearing; that such time allowed by statute for the filing of rehearing in the above cause expired at 12:00 M. midnight, January 23rd-24th, A. D. 1936, and that no motion for rehearing has been filed in such cause in the Court of Civil Appeals of Austin prior to the expiration of the time allowed by law for the filing of same, as hereinabove indicated."

Respondents offered in evidence an affidavit by George A. Knapp (shown in assignment of error No. 4) and complainant objected to the admission of such evidence in its entirety because irrelevant and immaterial, outlining fully and completely the reasons for such objection to show its irrelevancy and immateriality; complainant objected to all the portions of such affidavit which showed on the face of same to be hearsay because same were hearsay; and complainant objected to all portions of such affidavit which related to the physical conditions of the various highways and bridges of the designated highway system of the State of Texas and their ability to withstand traffic burdens moving thereover, other than the particular highways sought to be used by complainant (as shown in Bill

of Complaint), because such portions were especially immaterial and irrelevant. The Court admitted such affidavit in evidence so far as same related to
119 the particular highways sought to be used by the complainant (as shown in Bill of Complaint), to which ruling of the Court complainant excepted; and the Court excluded from evidence such affidavit so far as same related to other highways and bridges of the designated highway system of the State of Texas and their ability to withstand traffic burdens thereover, to which ruling of the Court respondents excepted.

It is agreed by and between counsel for the respective parties hereto that the above and foregoing constitutes a true and correct condensed statement of the material evidence adduced and proceedings had upon the hearing of this cause, and that same may be approved and filed as part of the record herein.

WILLIAM McCRAW,
Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Respondents,
Ernest O. Thompson, C. V. Terrell, Lon A. Smith, each individually, The Railroad Commission of Texas, Walton D. Hood, W. B. Renfro and Tom Miller.

PRICE & CHRISTOPHER,
By T. S. CHRISTOPHER,
WM. E. DAHL,
Attorneys for Complainant.

The above and foregoing statement of the evidence having been presented to the Court and the Court having examined the same, hereby approves the same as a true and correct condensed statement of the ma-

terial evidence introduced before the Court on the trial of this cause.

120 It is Further Ordered that said statement of the evidence as above approved to be filed shall be included in the transcript of the record for the purpose of this appeal.

Dated this the 31st day of October, A. D. 1936.

JAMES C. WILSON,
Judge, United States District Court.

PRAECIPE FOR RECORD ON APPEAL INCLUDING WAIVER BY APPELLEE.

121 Filed Oct. 31, 1936.

(Title Omitted.)

To the Clerk of the United States District Court, Northern District of Texas, Fort Worth, Texas:

You will please prepare and certify a duly authenticated copy of the transcript of the record in the cause of A. E. McDonald, vs. Ernest O. Thompson, et al., No. 864—In Equity, for printing and for filing, and for use, in the United States Circuit Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, in the appeal of Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, Appellants, vs. A. E. McDonald, Appellee, and you will please include therein the following:

122 1. Complainant's Bill of Complaint, filed January 17, 1936.

2. Respondents' Motion to Dismiss Complainant's Bill of Complaint, filed January 25, 1936.

3. Respondents' First Amended Answer (without exhibits) filed April 30, 1936.

4. Order granting permanent injunction, filed and entered July 16, 1936.

5. Finding of Fact and Conclusions of Law, filed July 14, 1936.

6. Motion of respondent's to Amend Decree, filed October 13, 1936.

7. Waiver of Service of Notice of Motion to Amend Decree, filed October 13, 1936.

8. Order Amending Decree, filed and entered October 13, 1936.

9. Petition of Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller for appeal filed October 13, 1936.

10. Assignments of Error filed by Ernest O. Thompson, C. V. Terrell, and Lon A. Smith, each individually, the Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller, filed October 13, 1936.

11. Order Allowing Appeal and fixing appeal bond, filed and entered October 13, 1936.

12. Waiver of Citation on Appeal, filed October 13, 1936.

13. Appeal Bond and Order Approving Appeal Bond, filed October 13, 1936.

14. Statement of the Evidence, filed October 31, 1936.

15. This praecipe including waiver by appellee.

16. Clerk's Certificate.

17. You will please style the record on the appeal as follows: Ernest O. Thompson, et al, Appellants, vs. A. E. McDonald, Appellee.

WILLIAM McCRAW,
123 Attorney General of Texas,
CURTIS E. HILL,
Assistant Attorney General,
Attorneys for Appellants, Ernest O. Thompson, C. V. Terrell, Lon A. Smith, each individually, The Railroad Commission of Texas, Walton D. Hood, W. B. Renfro, and Tom Miller.

Waiver.

We, Price and Christopher, and William E. Dahl, attorneys for complainant, or appellee on appeal, hereby acknowledge receipt of a copy of the foregoing praecipe and waive further service of a copy of the same, and agree that the instruments called for in said praecipe may constitute the record on appeal in this cause.

PRICE & CHRISTOPHER,
By T. S. CHRISTOPHER,
WM. E. DAHL,
Attorneys of Record for A. E. McDonald.

CLERK'S CERTIFICATE.

I, GEO. W. PARKER, Clerk of the District Court of the United States in and for the Northern District of Texas, do hereby certify that the above and foregoing is a full, true, and correct copy and transcript of record of all papers called for in the praecipe which is a part of this transcript, in Cause No. 864 Equity, on the docket of aforesaid Court, wherein Ernest O. Thompson, et al. are appellants, and A. E. McDonald is appellee, as fully as the same remain on file and of record in my office at Fort Worth, Texas.

Witness my hand and seal of office at Fort Worth, Texas, this 5th day of November, 1936.

(Seal) GEO. W. PARKER, Clerk,
By RIVE J. McGREW, Deputy.

[fol. 159] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of February 22nd, 1938

No. 8286

ERNEST O. THOMPSON et al.

versus

A. E. McDONALD

On this day this cause was called, and, after argument by Albert G. Walker, Esq., for appellants, and T. S. Christopher, Esq., for appellee, was submitted to the Court.

[fol. 160] OPINION OF THE COURT—Filed April 12, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8286

ERNEST O. THOMPSON et al., Appellants,

versus

A. E. McDONALD, Appellee

Appeal from the District Court of the United States for the Northern District of Texas

(April 12, 1938)

Before Sibley and Holmes, Circuit Judges, and Mize, District Judge

MIZE, District Judge:

The appellants in this Court are the Railroad Commissioners of the State of Texas and certain enforcement officers of the State of Texas charged with the duty of enforcing the Motor Carrier Law within the State of Texas, and

were defendants in the Court below. Appellee was the complainant and by his bill of complaint filed on the 17th day of January, 1936 sought an injunction against the appellants to restrain them from interfering with him or his employees while they were engaged in his business of transporting [fol. 161] freight in interstate commerce while in the State of Texas.

Complainant alleged that for many years he had operated motor trucks in the transportation of property as an interstate common carrier for hire and that he had been regularly operating as such interstate common carrier by motor vehicle for hire many years prior to June 1, 1935 and at all times since June 1, 1935; that this controversy involves his right to continue so to operate as an interstate common carrier for hire by motor vehicle over the highways of Texas and Oklahoma under the interstate commerce clause of the Federal Constitution and particularly by reason of the enactment by Congress of the Motor Carrier Act of 1935; that for several years prior to June 1, 1935 and subsequent to that date he transported various commodities from points within the State of Texas to points in the State of Oklahoma, and in such transportation he especially used within the State of Texas Federal Highways No. 75, No. 77, No. 80, No. 81, No. 90, No. 281 and No. 290, and that these were all federal aided highways; that he used various highways within the State of Oklahoma and had been authorized by the State of Oklahoma so to do in his business of moving interstate commerce; that he has not engaged in transporting property, nor does he desire to engage in the transportation of property in intra-state commerce; that he was engaged exclusively in the transportation of interstate commerce.

He alleged that the Motor Carrier Act of 1935, passed by Congress of the United States, was approved August 9, 1935 and by its terms became effective on and after October 1, 1935, and that by this Act the sole and exclusive jurisdiction, power and authority to regulate the transportation of passengers and property by motor vehicle operating in interstate commerce is vested exclusively in The Interstate [fol. 162] Commerce Commission of the United States; that under the provisions of said Act he would be entitled to apply for and to receive from The Interstate Commerce Commission a certificate of public convenience and necessity and such permits as would entitle him to continue his operations over said various highways in the transportation of prop-

erty and goods moving in interstate commerce; and that he, under the terms and provisions of said Act, will be entitled to receive said certificates and such permits as a matter of right under the provisions of Section 206 of the Act; that under said Act as amended the time for applying for said certificate or permit had not expired and would not expire until January 29, 1936; that by order of The Interstate Commerce Commission the effective date of Section 206 of the Act, the time for applying for the certificate had been extended until the 12th day of February, 1936, and that he was engaged in taking active steps to secure said certificate and necessary permits and to file the proper application therefor; that he had practically completed his application for filing and that same would be filed with The Interstate Commerce Commission within the time prescribed by the Act of Congress and the order of the Railroad Commission; that at the time of the filing of his bill, no certificate or permit had been issued and that the time for the issuance of said certificates pursuant to said Act had not yet arrived; that the jurisdiction over the regulation and control of the transportation by motor vehicle of passengers and property in interstate commerce nevertheless now exclusively rests in The Interstate Commerce Commission.

He further averred that he had complied with all requirements of the aforesaid Act of Congress, or was attempting to comply therewith by filing the aforesaid application, and had at all times mentioned complied with all the appropriate and applicable police regulations of the State of Texas with reference to aforesaid Act of Interstate Commerce. He [fol. 163] averred further that the defendants were attempting to exercise the same control and power of regulation in the conduct of his interstate transportation business within the State of Texas as was exclusively vested in the Interstate Commerce Commission by the said Act of Congress. He averred that because he had not received from the Railroad Commission of Texas the certificate of convenience and necessity under and pursuant to said Texas statutes, defendants have refused to issue and deliver to him the license tags or numbers that are required by the Railroad Commission to be affixed to all motor vehicles carrying property in the transportation business for hire as common carriers in the State of Texas; that the Railroad Commissioners, the law enforcement officer and the Chief Inspector for the Railroad Commission of Texas had issued orders and instructions to all

inspectors and highway patrolmen of Texas and all law enforcement officers to arrest all of the drivers and stop the trucks of complainant on and after January 15, 1936; and that the defendants would carry these orders into effect unless restrained by decree of the Court.

He alleged that he had complied with all the police requirements of the State of Texas to permit him to operate in interstate commerce and at the time of the filing of his bill of complaint his trucks were loaded with freight to be moved in interstate commerce, but that if he attempted to move them, his employees would be stopped and arrested.

He averred that he had complied with all the laws of the State of Texas in the following manner:

1. That he had caused public liability to be issued and that same was then in full force and effect.

2. That his trucks were in excellent mechanical condition and properly registered for operation in the state in which they operate, and that his trucks were in every way suitable [fol. 164] to operate safely on the highways and to transport property within and through the state of Texas.

3. That he had offered to comply with every appropriate and applicable law of the State of Texas and all rules and regulations of the Railroad Commission of Texas.

He alleged that the aforesaid acts of the respondents and the threatened continued action of interfering with the conduct of his business are unlawful, arbitrary and without sanction of law, State or Federal, and constitute an invasion of his rights guaranteed under the laws of the Constitution of the United States in the following particulars:

1. That said acts deprived him of his rights under the Constitution vesting in the Congress of the United States exclusive jurisdiction over the regulation of interstate and foreign commerce.

2. That said action and conduct constituted an unlawful deprivation of his property and property rights under the Due Process Clause of the 14th Amendment to the Constitution.

Complainant failed to allege affirmatively that he had applied to the Railroad Commission of the State of Texas

for a permit and that he had shown to the Railroad Commission that the structure of the highways proposed to be used by him was such that their proper preservation would not be impaired by the use sought by him. Moreover, he failed to allege that the safety of the public upon said highways over which he sought his route would not be unreasonably endangered and that the additional use which he expected to impose upon said highways would not so congest traffic as to render them unsafe for the traveling public. Likewise, he did not allege affirmatively that the Railroad Commission of Texas had made an investigation of his [fol. 165] application to use these highways and found as a fact that the use to which he intended to put them would not unduly render them unsafe for traffic or be unreasonably destructive of the highways.

The defendants answered the bill and denied that the complainant had been engaged in the bona fide operation as a common carrier for hire in interstate or foreign commerce either prior to June 1, 1935 or since that time, and averred that he had been using the highways in violation of the laws of the State of Texas. They admitted, of course, the passage of the Motor Carrier Act of 1935 by Congress, but denied that said Act superseded the power of the Commission to provide for the safety of the traveling public on the roads, as well as the preservation of the highways of the State, and alleged specifically that the Railroad Commission "has the jurisdiction and power to prohibit the use of the highways of Texas for the transportation of property for hire if such highways are not of proper construction or in proper condition to maintain said traffic, or if the contemplated use of said highways by the complainant would increase the dangers and hazards on said highways and congest the traffic thereon and unreasonably interfere with the use thereof by the public, and respondents further say that Article 911a, Vernon's Annotated Civil Statutes 1925, commonly referred to as the 'Motor Carrier Bus Law of Texas' and Article 911b, Vernon's Annotated Civil Statutes 1925, commonly referred to as the 'Motor Carrier Truck Law of Texas', so far as such statutes effect the physical preservation of public highways of Texas and prevent an unreasonable interference by motor carriers for compensation and hire operated thereover with the use of such highways by the ordinary travel-

ing public, were, at the time of their enactment, and now are, proper, reasonable, and necessary police regulations of the State of Texas, regulating the use of the public highways by Motor Carriers for compensation and hire there-[fol. 166] over, and such statutes now remain in full force and effect to the extent that same effect the regulation of the use of the public highways of the State of Texas by Motor Carriers thereover for compensation and hire, whether operating in intrastate commerce or interstate commerce, notwithstanding the passage of the Motor Carrier Act of 1935."

Respondents averred specifically and affirmatively in their answer that on May 1, 1934 the complainant did file with the Railroad Commission an application for a certificate or permit to operate in interstate commerce over the route sought by his present bill and that this was denied by the Commission after a hearing had upon same, and made the findings of fact a part of its answer. The answer averred that the order denying the application was made on July 14, 1934 and thereafter the complainant appealed to the District Court of Travis County and that Court entered judgment for the complainant and granted the injunction. The Railroad Commission appealed to the Court of Civil Appeals from that judgment and the Court of Civil Appeals, after having considered the matter, reversed the trial court and held that the order of the Railroad Commission denying his application was valid. The answer further averred there was no application for a rehearing before the Court of Civil Appeals and that judgment then became final.

The answer denied that the complainant had complied with the police requirements of the State of Texas and that the complainant had endeavored to comply with or was complying with the laws of Texas.

Respondents further averred affirmatively that the highways over which complainant sought to operate are not in such condition as to justify the issuance of any permit to him, and that said highways are now so congested that his operation would unreasonably interfere with the uses thereof by the traveling public. Respondents denied that [fol. 167] their action or threatened action was unreasonable, arbitrary or without sanction of law. They alleged that notwithstanding the Motor Carrier Law of Congress,

the Railroad Commission of Texas retained jurisdiction to determine whether or not the highways of the State were of such construction or the traffic thereon in such congested condition as that complainant's operation would unreasonably interfere with the use of the highways by the traveling public; that this jurisdiction was not taken away by the Act of Congress.

Respondents further averred in their answer that should complainant present to the Commission an application to transport property for hire in interstate commerce over the highways of Texas, the said Commission would hear said application; that in hearing the application the Commission would require the applicant to show by facts that the highways proposed to be used by him were capable of withstanding the proposed use without undue injury and damage to them and without unreasonable interference with their use by the general public for ordinary purposes. The respondents specifically averred that the Commission would not require the applicant to prove that public convenience and necessity require the proposed service, nor would it consider the adequacy of the existing transportation facilities or the effect the proposed operation would have on the existing transportation facilities in determining whether or not it would authorize said applicant to operate over said highways.

The cause was heard upon the bill and answer, oral and documentary evidence. The lower court was of the opinion that the Motor Carrier Act of 1935 of Congress superseded the Texas Motor Truck laws in so far as the Texas Act gave to the Railroad Commission power to forbid the use of the highways by complainant's trucks when engaged exclu- [fol. 168] sively in interstate commerce. The bill of complainant in the present case, stripped of the conclusions of the pleader, alleges in short that he is entitled to the certificate of public convenience and necessity from the Interstate Commerce Commission, and is therefore entitled to operate over the highways of the State of Texas as a matter of right, and that the Motor Carrier Act of 1935 supersedes all laws of the State of Texas in so far as the control of the state highways over which interstate commerce may be carried is concerned. It is the contention of the appellee that the federal law is superior and exclusive in so far as the right to operate in interstate commerce is concerned

and if the Texas law as it existed prior to the Motor Carrier Act of 1935 empowered the State Railroad Commission to issue any kind of interstate certificate, that power was superseded by the Federal Act—that Congress occupied the entire field. It is the contention of the respondents that the Motor Carrier Act does not preclude the Railroad Commission of the State from regulating the use of the highways by interstate carriers in so far as the preservation and safety of the highways may be necessary.

The record in this case discloses that on May 1, 1934 the appellee filed his application with the Railroad Commission of the State of Texas and that tribunal, after a hearing, denied the application in July of that year. The opinion of the Commission discloses that it had given extensive investigation and serious thought to the application of complainant, as well as other applicants, and it made an exhaustive finding of fact and concluded that the application of the complainant should be denied. The Commission determined, from the hearing thus had, that heavy truck traffic, especially at night, makes the highways leading into the larger centers of population so dangerous that citizens are afraid to use the highways as much as they otherwise would; that citizens having business in the larger cities, such as Houston, Dallas and some of the others, are unable [fol. 169] to return home at night because of the danger, and remain in the cities rather than undertake to do so; that many of the citizens are deprived of the use of some of the principal highways by reason of heavy traffic leading to the large centers of population, and that citizens would use the highways more were it not for the fact that the truck traffic has caused such hazardous conditions that they fear for their safety if they undertake to use the highways. The Commission further found that at various seasons of the year there was a fluctuation of traffic, but particularly in the cotton season truck traffic was extremely heavy. The Commission had before it many of the citizens of the state, public officials and disinterested witnesses, and after a full hearing, denied the application of the complainant, from which order the complainant appealed, but the order of the Railroad Commission was upheld by the Court of Civil Appeals, the opinion of which is reported in Vol. 90, Southwestern Reporter (2d) page 581. It will be unnecessary to set out the details of the finding of the Commission for the

reason that the opinion of the Court of Civil Appeals of the State of Texas set out at length the opinion of the Railroad Commission.

Complainant contends that under Section 206 of the Motor Carrier Act of 1935 the Interstate Commerce Commission has exclusive jurisdiction over the highways and forbids state interference. He relies largely upon the authorities of Southwestern Greyhound Lines, Inc. v. Railroad Commission of Texas, et al., 99 S. W. (2d) 268; Railroad Commission, et al. v. Bates, et al., 108 S. W. (2d) 283; State, ex rel. L. & L. Freight Lines, Inc. v. Douglas, 169 So. 389; Houston E. & W. T. R. Co. v. U. S., 234 U. S. 342; Gibbon v. Ogden, 6 L. Ed. 23; and the authorities therein cited, and Motor Carrier Act, 49 U. S. C. A., Sections 301, et seq.

The authorities of appellee above cited are not controlling. Vernon's Ann. Civ. St. Tex., Article 911 (b) Sec. 6 [fol. 170] sets out the things which an applicant for a permit must show before it will be granted. Sections 6 and 9 of Article 911 (b) designate what the Commission shall consider in granting or refusing permits and certificates and these are further enlarged by Section 4 (d), which specifically makes it the duty of the Commission to regulate and supervise motor carriers in all matters whether therein specifically mentioned or not, so as, carefully, to preserve transportation and relieve undue burden on the highways arising by reason of the use of the highways by motor carriers, adjusting and administering its regulations in the interest of the public. It was held in the case of Wald Storage & Transfer Co. v. Smith, 4 Fed. Sup. 61, that the very purpose of the Act was to limit the use of the public roads by carriers for hire so as to conserve them for the more effective, safe and convenient use of the general public, the primary purpose for which they were intended, as well as to conserve and strengthen the transportation facilities of the State,—that the prime purpose of the Act was to conserve the roads for their primary uses. See also Texport Carrier Corporation v. Smith, et al., 8 Fed. Sup. 28. As stated by the Court in the Texport Carrier Corporation suit supra, the Motor Carrier Act of Texas is a comprehensive one and vests in the Railroad Commission exclusive powers and confers upon it important duties. It is plain, therefore, that the Legislature of Texas undertook

to vest in the Railroad Commission full jurisdiction over the public highways of the State of Texas, and imposed the duty upon it to protect and preserve the highways of the state and to secure the safety of the traveling public thereon. Appellee, as above stated, contends that this authority is vested exclusively in the Interstate Commerce Commission by the Motor Carrier Act of 1935.

The Legislature, in the exercise of its police powers, has the authority to preserve its highways and protect the safety of the traveling public so long as its acts are not in [fol. 171] direct conflict with an Act of Congress regulating interstate commerce over the highways. Authority of the Legislature is limited or superseded by the Act of Congress only in so far as the Act of the Legislature may be in conflict with the express regulation of Congress. Congress, under its power to regulate interstate commerce, may occupy the entire field or it may limit its regulation, and when it does occupy the entire field, then state regulations by a Commission are void. But if Congress occupies only a limited field, then, such laws as the State may enact, within its police power, for the protection of its highways and the safety of the public thereon are valid, provided the Acts of the Legislature are not in direct conflict with the Act of Congress. Congress is not required to occupy the entire field and until it does so occupy the entire field, the states have a large area over which they may exercise the power appropriate to their jurisdiction.

This rule does not apply to the subject of Interstate Commerce demanding uniformity of regulation. With reference to that situation, the state is without power because the Constitution itself occupies the field in that class of cases, even though there be no federal legislation. The subject of protection of the highways in so far as they may be used for interstate commerce does not require uniformity of action, and, as a matter of fact, there is no uniformity of action by the various states at this time. The Interstate Commerce Commission has jurisdiction over the commercial considerations appertaining to the interstate truck business, but the preservation and safety of the roads themselves has been left with the State Commissions. It is well settled that if Congress occupies only a limited field, then state regulation is not prohibited. A state statute is super-

seded only when the conflict is so direct and positive that the two acts cannot be reconciled.

The Motor Carrier Act of 1935, passed by Congress, does [fol. 172] not provide for any tribunal to determine the method by which the public highways of any state shall be maintained or preserved, nor how the safety of the traveling public may be protected against any dangers that might be caused by an undue amount of traffic, nor does the Act authorize the Interstate Commerce Commission to make the rules or regulations with reference to this. Moreover, said Act does not provide that every person who shall receive a certificate of public convenience and necessity shall be entitled to the use of the various highways of the state, but the said Act prohibits anyone engaging in interstate commerce until he receives such certificates from the Interstate Commerce Commission. The Interstate Commerce Commission under the Act has the power and exclusive authority to pass upon such applications and to refuse them. If it should refuse one, then such applicant would not be permitted to engage in interstate commerce. This is made clear by the Act. That provision, however, is not in direct conflict with the provisions of the motor truck laws of the State of Texas which require the Railroad Commission of the State of Texas to determine whether or not the preservation of its highways and the safety of the traveling public will be endangered if there is an excessive amount of traffic on the highways. The determination of that question has been left to the states.

The question involved in this case has been settled by a decision of the Supreme Court of the United States handed down on February 14, 1938,—South Carolina State Highway Department, et al. v. Barnwell Bros. Inc., et al. It is unnecessary to comment on this case as it is decisive of the question involved in the instant case. An authority exceptionally applicable in principle and very clear in diction is that of Kelly v. State of Washington, 302 U. S. 1. These authorities supra and the authorities cited therein demonstrate clearly that the Legislature of the State of [fol. 173] Texas was acting within its powers and that its acts have not been superseded by the Motor Carrier Act of 1935.

The authority and control over the highways which the railroad Commission is attempting to exercise herein is not

the same authority and power to regulate interstate commerce as is vested in the Interstate Commerce Commission. The Interstate Commerce Commission has the power to act within the limits of the Motor Carrier Act but no other. The order of the Railroad Commission is not shown to be arbitrary or unreasonable, but, on the contrary, was reached after mature thought and thorough investigation.

Accordingly the judgment of the lower court is reversed and the case is remanded with instructions to dismiss the bill.

[fol. 174] JUDGMENT

Extract from the Minutes of April 12th, 1938

No. 8286

ERNEST O. THOMPSON et al.

versus

A. E. McDONALD

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered, adjudged and decreed by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby, remanded to the said District Court with instructions to dismiss the bill;

It is further ordered, adjudged and decreed that the appellee, A. E. McDonald, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 175] MOTION AND ORDER STAYING MANDATE—Filed April 21, 1938

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 8286

ERNEST O. THOMPSON et al., Appellants,

versus

A. E. McDONALD, Appellee

Petition for Stay of Mandate

Now comes Appellee, A. E. McDonald, and moves the Court to enter an order withholding the mandate in this case because it is the bona fide intention of the Appellee to make proper application to the Supreme Court of the United States for Writ of Certiorari in this case within the next ninety days, and in support hereof Appellee attaches the professional statement of his counsel, T. S. Christopher, of Fort Worth, Texas.

A. E. McDonald, Appellee.

[fol. 176] I hereby certify that it is the bona fide intention of the Appellee, A. E. McDonald, to remove this case to the Supreme Court of the United States by appeal or make application to said Court for Writ of Certiorari or do both as he may be advised within the next ninety days, and that I believe there is merit in his case and that the judgment of the United States Circuit Court of Appeals ought to be reversed by the Supreme Court of the United States.

T. S. Christopher, Attorney for A. E. McDonald, Appellee. A. E. McDonald, Appellee.

[fol. 177] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH DISTRICT

No. 8286

ERNEST O. THOMPSON et al., Appellants,

versus

A. E. McDONALD, Appellee

On consideration of the Application of the appellee in the above numbered and entitled cause for a stay of the mandate

of this court therein, to enable appellee to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, it is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 21st day of April, 1938.
(Signed) Rufus E. Foster, United States Circuit Judge.

[fol. 178] CLERK'S CERTIFICATE

UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

UNITED STATES OF AMERICA:

I, Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 159 to 177 next preceding this certificate contain full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion of the United States Circuit Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 8286, wherein Ernest O. Thompson, et al., are appellants, and A. E. McDonald is appellee, as full, true and complete as the originals of the same now remain in my office.

I further certify that the pages of the printed record numbered from 1 to 158 are identical with the printed record upon which said cause was heard and decided in the said Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Circuit Court of Appeals, at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of April, A. D. 1938.

Oakley F. Dodd, Clerk of the United States Circuit Court of Appeals, Fifth Circuit, by E. V. Vendling, Deputy Clerk. (Seal United States Circuit Court of Appeals, Fifth Circuit.)

[fol. 179] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1938

No. 55

A. E. McDONALD, Petitioner,

vs.

ERNEST O. THOMPSON et al.

ORDER ALLOWING CERTIORARI—Filed October 10, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.